

# Exhibit 49-1

ORIGINAL

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UNITED STATES DISTRICT COURT NEW YORK  
FOR THE EASTERN DISTRICT OF NEW YORK

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MARTIN TANKLEFF,

Plaintiff,

-against-

THE COUNTY OF SUFFOLK, K. JAMES MCCREADY,  
NORMAN REIN, CHARLES KOSCIUK, ROBERT DOYLE,  
JOHN MCLELHONE, JOHN DOE POLICE OFFICERS  
#1-10, RICHARD ROE SUFFOLK COUNTY EMPLOYEES  
#1-10,

Defendants.

-----X

666 Old Country Road  
Garden City, New York

October 2, 2013  
10:00 a.m.

DEPOSITION of CHARLES KOSCIUK, Defendant  
herein, taken by the Plaintiff, pursuant to  
Federal Rules of Civil Procedure and Notice,  
held at the above-mentioned time and place,  
before Dolly Fevola, Notary Public of the  
State of New York.

A P P E A R A N C E S :

NEUFELD SCHECK BRUSTIN, LLP  
Attorneys for the Plaintiff  
666 Old Country Road  
Garden City, New York 11530  
BY: BARRY SCHECK, ESQ.  
ELIZABETH DANIEL VASQUEZ, ESQ.  
BRUCE BARKET, ESQ.

SUFFOLK COUNTY DEPARTMENT OF LAW  
Attorneys for the Defendants  
H. Lee Dennison Building  
Hauppauge, New York  
BY: BRIAN MITCHELL, ESQ.

STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL  
Attorneys for the State of New York  
(In unrelated matter)  
120 Broadway  
New York, New York 10271-0332  
BY: JOSEPH TIPALDO, ESQ.

ALSO PRESENT:

MARTIN TANKLEFF

PERRY FINKELSTEIN, Videographer

STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by  
and among counsel for the respective parties  
hereto, that the filing, sealing and  
certification of the within deposition shall  
be and the same are hereby waived;

IT IS FURTHER STIPULATED AND AGREED that  
all objections, except as to form of the  
question, shall be reserved to the time of  
the trial;

IT IS FURTHER STIPULATED AND AGREED that  
the within deposition may be signed before  
any Notary Public with the same force and  
effect as if signed and sworn to before the  
Court.

\* \* \*



C. Kosciuk

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THE VIDEOGRAPHER: This is Reel  
Number 1 of the deposition of  
Charles Kosciuk in the matter of  
Martin Tankleff versus the County of  
Suffolk and others in the United  
States District Court for the  
Eastern District of New York.

The deposition is being held at  
666 Old Country Road, Garden City,  
New York on October the 2nd, 2013,  
at approximately 10:14 a.m.

My name is Kathy Pascal, the  
videographer from Pro Video  
Productions, located in Nesconset,  
New York. The court reporter is  
Dolly Fevola in association with  
Fevola Reporting and Transcription.

Will counsel please introduce  
themselves and state the parties you  
represent.

MR. SCHECK: Barry Scheck,  
Neufeld, Scheck, Brustin, LLP for  
the Plaintiff, Martin Tankleff.  
With me is Elizabeth Daniel Vasquez.

C. Kosciuk

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MR. MITCHELL: For the County  
of Suffolk, Dennis M. Brown, Suffolk  
County, by Brian Mitchell, Assistant  
District Attorney.

MR. TIPALDO: Assistant  
Attorney General Joseph Tipaldo for  
the State of New York.

THE VIDEOGRAPHER: Will the  
court reporter please swear in the  
witness.

C H A R L E S K O S C I U K, after  
having been first duly sworn by a Notary  
Public of the State of New York, was  
examined and testified as follows:

(By The Reporter)

Q Please state your name for the  
record.

A Charles M. Kosciuk. 8  
Woodcutters Path, St. James, New York 11780.

EXAMINATION BY

MR. SCHECK:

MR. SCHECK: Good morning, Mr.  
Kosciuk. Do I have that right?

THE WITNESS: Kosciuk.

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C. Kosciuk

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MR. MITCHELL: Barry, I'm  
terribly sorry. Can we mark his  
address confidential?

MR. SCHECK: No problem. I'm  
really bad with names.

Q Mr. Kosciuk, have you ever been  
deposed before in a civil case?

A In a civil case, yes.

Q Can you tell us about that?  
When was that?

A It was a while back. It was a  
motor vehicle accident. What year? I would  
have to guess. I don't remember.

Q Were you involved in an  
accident?

A No, no, no. I was the expert.

Q I see. And you were the expert  
for the Plaintiff, the Defendant?

A For neither. Suffolk County  
reconstructed the case and I don't know who  
I was for, I was just called in to testify.

Q I got you. Now, could you tell  
us a little bit about how you prepared for  
this deposition?

C. Kosciuk

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MR. MITCHELL: I object to the form. You can answer.

MR. SCHECK: You can answer.

A On Monday I met Brian Mitchell at his office and we reviewed some photographs and we went over some of the court testimony.

Q So the court testimony being your court testimony?

A Yes.

Q What other testimony, if you recall?

A That was it.

Q Okay. And prior to -- And what photographs, if you recall, did you review?

A Scene photographs.

Q So those would be some of the photographs of where Seymour Tankleff was found in his office?

A Of his office, yes. I was not there when he was found in his office.

Q No, no, of where he was found in his office, right?

A Correct.

C. Kosciuk

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Q And some of the crime scene photos as to where Arlene Tankleff was found?

A Yes.

Q And also, did you review the photograph of that model that had been made of the entire Tankleff residence for purposes of the trial?

A No.

Q Okay.

(Whereupon, Plaintiff's Exhibit 1 was marked for identification.)

Q Looking at Plaintiff's Exhibit 1 for identification, do you remember this to be a photograph of a model that was created for purposes of the trial of the Tankleff residence at the time of the murders?

A Yes, I do.

Q Okay. We'll come back and review this. I just wanted to make sure you remembered that.

Prior to talking with Mr. Mitchell and reviewing your trial testimony,

C. Kosciuk

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1 I take it, yes --

2 A Yes.

3 Q -- and these photographs, when  
4 was the last time before that that you  
5 discussed this case with anyone that you  
6 recall?  
7

8 A Way back. As far as a legal  
9 person?

10 Q Anyone. Let's just start with  
11 anyone.

12 A I did receive a call maybe a  
13 year ago about the County was being sued and  
14 I think I was named in the suit, and I did  
15 get a subpoena and then the County took care  
16 of that subpoena.

17 Q Okay.

18 A That was it.

19 Q Right. And before that, do you  
20 remember talking with reporters?

21 A No.

22 Q Investigators? Anybody?

23 A No, nobody.

24 Q Have you been following Mr.  
25 Tankleff's post conviction motions that led

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C. Kosciuk

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to his conviction being vacated?

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A No.

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Q Did you discuss with any of

5

your old colleagues at the Suffolk County

6

Police Department anything about this case

7

while those post conviction motions were

8

going on?

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A Not really, no.

10

Q When did you retire by the way?

11

A 2002. The end of July 2002.

12

Q What did you do after you

13

retired?

14

A I still do motor vehicle

15

accident reconstruction privately.

16

Q Do you have your own firm or

17

are you affiliated with somebody?

18

A I work with another person.

19

Q You work with what?

20

A Another person.

21

Q And who is that?

22

A Bob Genna of the crime lab.

23

Q Oh, so you work with Mr. Genna?

24

A Yes.

25

Q And he is still working at the

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C. Kosciuk

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Suffolk County Crime Lab?

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A Yes.

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Q What is his position?

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A He's the director.

6

Q How does that work? How does

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he wind up hiring you to do reconstruction?

8

A Originally at the laboratory

9

that was my function when I retired and then

10

we continued that when I retired and we only

11

handle civil cases at this time.

12

Q When you say "we" you mean --

13

A Him and I.

14

Q And do you do this for the

15

County of Suffolk?

16

A No.

17

Q So Mr. Genna -- Is this a

18

profit-making entity?

19

A Yes.

20

MR. MITCHELL: I object to the

21

form. You can answer.

22

Q Does it have a name? Is it

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incorporated?

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A You know, I have no idea what

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that name is if he does have a name.



C. Kosciuk

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Q Is it a partnership?

A What I mostly do is I mostly respond to the scene with him. We collect the physical evidence, measurements, and I do reconstruction and he goes over the reconstruction and he takes care of all the testimony and all the attorneys involved. I have very little contact outside of the scene itself.

Q Are you paid by the County of Suffolk?

A No.

Q So this is something that Mr. Genna does for private attorneys and automobile accident cases for the most part?

A That's correct.

Q Do you know if he is hired by the Plaintiffs or the Defendants?

A Either side, I assume.

Q Either side. Do you advertise under any particular name?

A No.

Q How do people get to know to call you guys?

C. Kosciuk

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A Word of mouth.

Q Word of mouth?

A Yes.

Q Would we find you in the Yellow Pages or anything?

A No.

Q Do you know if it is a partnership or an incorporated entity?

A I can't answer that.

Q Do you know how much money per year you've been making on this?

A I would say, yes, about \$30,000 a year.

Q And are the two of you fifty/fifty partners, you and Mr. Genna?

A No.

Q What's the percentage?

A There is no percentage. I get paid per case and he takes care of mostly everything else. He actually pays me.

Q I see, right. Are you paid by the hour?

A No, per case.

Q How much would you get, let's

C. Kosciuk

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say, per case?

A Just \$1500.

Q I see. Would this involve responding to the scene of an accident and actually doing measurements and taking photographs? Tell me what you do.

A We more or less said it's respond to the scene, documenting the scene, photographing the scene, taking measurements, measuring the crush of the vehicles, trying to determine the final rest of the vehicles, and then coming back and reconstructing it, drawing a scale diagram of the scene, and then performing a reconstruction to try to determine how the accident happened, speeds of the accident, and then I turn all the mathematics and the diagrams over to him.

Q Right. Do you actually write reports for him?

A Do I? No.

Q You just tell him or you do this verbally?

A I do the mathematical portion

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C. Kosciuk

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and the diagramming and I turn that all over

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to him.

4

Q I see. But you wouldn't write

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a report saying, in my judgement this is

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what happened at the accident?

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A I might not write it, I might

8

verbally tell him.

9

Q Just tell him?

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A Yes.

11

Q Okay. And so you've been doing

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this for how long with Mr. Genna? Since you

13

retired?

14

A How long have we been doing it?

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Q Yes.

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A Since 1983.

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Q And you said you retired in --

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A 2002, July.

19

Q Oh, I see. So from 1983

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through 2002 you and Mr. Genna were doing

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reconstruction together and testifying?

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A Right.

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Q As private consultants,

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correct?

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A Yes.

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Q And was there anyone else that worked this entity which, I guess, you're not sure if it's a public corporation or a partnership?

A Is there anyone else involved? No, just he and I.

Q Just the two of you. Do you have a name for this entity?

A No, I don't have it.

Q Okay. Do you know if he does?

A I can't answer that.

Q Now, during the course of -- Since you retired in 2002, Mr. Genna is still working at Suffolk County, correct?

A Yes.

Q And his position is?

A Director.

Q Director of Crime Lab?

A That's correct.

Q It's Bob, right?

A Bob Genna.

Q Has he kept you abreast of what's been going on in the Tankleff case, whether it's the post conviction criminal

C. Kosciuk

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proceeding or the civil case?

A Not really, no.

Q Okay. You did, however, meet with the State Investigation Commission?

A Yes, I did.

Q Can you tell us about that?

A I just remember them coming to the house and asking me questions about the case, yes. I don't remember how many years ago, but it was several years ago.

Q Okay. You remember ever talking to the attorney general's office other than -- Do you know Mr. Tipaldo, Joe Tipaldo, the attorney sitting here?

MR. TIPALDO: I'll stipulate we never met.

Q What about Bob Schwerdt from the attorney general's office?

A The name does not ring a bell.

Q There were other people from the attorney general's office that were involved in the case.

A I just remember two gentlemen coming to the house.

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C. Kosciuk

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Q You don't remember if they were from the attorney general's office or the State Investigation?

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A No.

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Q And they asked you questions, right?

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A Yes, they did.

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Q I'm going to review that interview with you in a while.

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A Sure.

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Q Did you review that with Mr. Mitchell before you came here to testify?

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A No.

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Q Okay. We'll review that in a few minutes.

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Now, did you know, by the way, Jerry Steuerman?

19

A No.

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Q Tod Steuerman?

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A No.

22

Q Seymour Tankleff?

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A No.

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Q Arlene Tankleff?

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A No.

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C. Kosciuk

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Q Marty Tankleff?

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A No.

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Q Just out of sheer curiosity,

5

Darcy or Barry Steuerman?

6

A No.

7

Q An individual named Glen

8

Harris?

9

A No.

10

Q Peter Kent?

11

A No.

12

Q Joey Creedon?

13

A No.

14

Q Billy Glass?

15

A No.

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Q William Glass?

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A No.

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Q Do you recall when you did the

19

crime scene in this case there were people

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you were told that had attended a card game

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the night before the murders?

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MR. MITCHELL: I object to the

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form.

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Q The night of the murders, I

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should say.



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C. Kosciuk

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A I don't believe we discussed anything as far as who was at the house that night with the crime lab anyway.

Q Okay. Now, so let's talk a little bit about have you ever read any books or articles about this case?

A No.

Q No?

A Maybe in Newsday as I was testifying. Probably back then I did; since then, no.

Q So I guess this matter has not been much concern to you one way or the other?

A Actually, in the laboratory once we finish it's hard to follow.

Q You move on to the next?

A Exactly, just move on to the next case.

Q Could you tell us a little bit about how you first came to work at the Suffolk Police Department and something about your professional history?

A How did I come about?

C. Kosciuk

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Q Yeah.

A Actually, I was going to school and working at Hazeltien Manufacturing and studying. I was actually studying to be a vocational teacher in mechanical technology and -- It's a long story -- my father-in-law ended up buying a deli for his brother-in-law, got a job and had nobody to run the deli and he elected me to run the deli. As I was running the deli, the police officers used to come in and say, take the test, take the test. Even though I wanted to be a teacher, I ended up taking the test and going on the job in '67.

Q When you say going on the job --

A I passed the test and was accepted into the academy.

Q By 1971, you made detective, right?

A That's correct.

Q And so what did you do between 1967 and '71?

A I was in a patrol in the Second

C. Kosciuk

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Precinct which is the Town of Huntington.

Q Then what?

A Then in about the end of 1971 I was assigned to the laboratory. And from there I performed drug analysis for about four-and-a-half years, then I was assigned to a firearms section until about 1983 where we got a request from the DA's office to start an accident investigation unit and Bob Genna, and I did start that unit and ever since then, from '83 until I retired, I was doing accident reconstruction.

From the first day I was assigned to the crime lab I was going on crime scenes, which is a separate section of the laboratory. The members of the laboratory from each section is assigned to be on standby. We get a time for crime scene analysis and reconstruction if we get calls from Homicide.

Q You started at the lab when, in '71?

A '67.

Q Oh.

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C. Kosciuk

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A Oh, not in the lab. In the PD,  
'67 in the lab, the end of '71.

Q I thought so. When you were  
working as a patrolman and through your  
career, did you have partners that you  
worked with?

A As a patrolman, yes, I did.

Q Do you remember who your  
partners were, as best you can remember?

A I do remember a couple of them.  
Jerry Castelnetto -- gosh -- O'Hara I  
remember, Marty Johs, that's about it.

I was in that precinct a short  
time then I was assigned to a police  
vehicle, a sector 207, and that you operate  
by yourself so you don't have anybody with  
you.

Q Okay. Now, did you ever work  
any cases prior to the Tankleff  
investigation with Detective McCready?

A I'm sure I did, yes.

Q Quite a number?

A I can't answer the number. I  
can't answer that.

C. Kosciuk

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Q Right.

A I don't know a number.

Q Right. Well, let's see if --  
I'm not holding you to any particular  
number, but when did you first, if you best  
can recall, start dealing with Detective  
McCready?

MR. MITCHELL: I object to the  
form. You can answer.

A I can't answer that. I don't  
know.

Q Well --

A I don't even know when he went  
into Homicide, when he started Homicide. I  
know I was in the lab ahead of him being in  
Homicide.

Q Right. So would it be fair to  
say that your interactions with Detective  
McCready began when he was a detective doing  
homicide cases and you were working at the  
lab working crime scenes?

A Repeat that, please.

Q Sure. Would it be fair to say  
that your relationship with Detective

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C. Kosciuk

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McCready began when you were working at the

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lab sometime after 1971 and he began doing

4

homicides?

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A Yes.

6

Q And so do you remember ever

7

working with him other than on a homicide

8

case at a crime scene?

9

A No.

10

Q And what about Detective Rein?

11

A It would be the same thing.

12

Through Homicide at scenes that would be our

13

relationship.

14

Q Detective Doyle?

15

A The same.

16

Q Detective Pfalzgraf?

17

A The same.

18

Q You knew them to be homicide

19

detectives?

20

A That's correct.

21

Q Now, about when did you first

22

begin to do homicides after you got to the

23

lab in 1971?

24

A Oh, about six months after I

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got into the laboratory.

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C. Kosciuk

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Q What would you do when you responded to a homicide?

A I was being trained by other personnel within the laboratory.

Q Who were you being trained by?

A At that time, Lieutenant Sullivan. At that time, I believe he was a sergeant. Detective Balanski, Detective Mike Mahoney. All the other members that were on the crime scene. You would be the third person responding. That's what I was, the third person responding as I was learning.

Q What about Ira Dubey?

A At the crime scene?

Q Did you ever work with him?

A Yes, definitely.

Q When were you working with him?

A When he came into the laboratory. He was assigned to the laboratory and then he was also on the crime scenes and yes, I did work with him.

Q For about how many years, if you can recall?

C. Kosciuk

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A I don't know how many years.

Q There came a time that it was discovered that Mr. Dubey had not been truthful about his qualifications; do you recall that?

MR. MITCHELL: I object to the form.

MR. TIPALDO: I object.

MR. MITCHELL: You can answer.

A I do.

Q And was that a surprise to you?

MR. MITCHELL: I object to the form. You can answer.

A Yes.

Q Tell me why.

MR. MITCHELL: I object to the form. You can answer.

A Because the understanding that I had was that he was testifying and the defense was calling him "Doctor," but he never corrected it. And that's about the best I can -- and then he got into trouble with that. That's all I can...

Q But in terms of interacting



C. Kosciuk

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1  
2 with him, you found him to be a competent  
3 and knowledgeable guy?

4 A Yes.

5 Q Was he, in any way, involved in  
6 mentoring or training you?

7 A No.

8 Q Who was involved in mentoring  
9 or training you with respect to crime scene  
10 reconstruction and blood spatter?

11 A I mentioned several other  
12 people in the laboratory already but outside  
13 the lab?

14 Q Let's start inside and outside.  
15 Tell us all the people that helped train and  
16 mentor you in blood spatter analysis and  
17 crime scene reconstruction.

18 A I sought outside education in  
19 that area and that would have been Dr. Pete  
20 Pizzola and Dr. DeForest who were affiliated  
21 with John Jay College of Criminal Justice  
22 and also at the Northeast Association of  
23 Forensic Scientists where they had crime  
24 scene reconstruction courses.

25 Q Did you attend classes at John

C. Kosciuk

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Jay?

A No, these were seminars.

Q So you would go to seminars that were being taught by Pete Pizzola and Peter DeForest?

A Right.

Q And the Suffolk County would send you to these seminars?

A That's right.

Q About how many a year, if you recall? If they were yearly, I should not assume.

A It was not a year. It was a seminar so it was like a weekend or a day, so some are completely dedicated to bloodstain pattern analysis.

Q You mentioned in 1983 was when you first started putting together a reconstruction and crime scene unit with Bob Genna, right, you said that?

A No.

Q Reconstruction?

A That was for accident investigation.

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C. Kosciuk

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Q Oh, I thought -- I'm sorry. I  
3 misunderstood you.

4

A There was always a crime scene  
5 investigation unit with the laboratory prior  
6 to me even getting to the laboratory.

7

Q What about reconstruction? How  
8 would you define what reconstruction is?

9

A The reconstruction would be the  
10 blood spatter analysis, the documentation of  
11 any like, footprints, tire tracks and  
12 directionality of the movement of vehicles  
13 and stuff like that.

14

Q And when did you start doing  
15 reconstruction at the Suffolk County Crime  
16 Lab?

17

A Accident reconstruction?

18

Q Any kind, whether it's accident  
19 reconstruction or reconstruction of the  
20 crime scene.

21

A About 1973, '74.

22

Q You started what first, doing  
23 accident reconstruction?

24

A No, crime scenes.

25

Q What would you start doing in

C. Kosciuk

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'73, '74?

A Identifying evidence,  
documenting the evidence, drawing the scene,  
recovering the evidence.

Q Other than documenting the  
scene, recovering evidence and drawing it,  
right, is there something else that you  
would say is involved in crime scene  
reconstruction?

MR. MITCHELL: I object to the  
form. You can answer.

A Can you rephrase that?

Q Sure. Would you agree with me  
that in terms of what is known as crime  
scene reconstruction that part of the job is  
to attempt to create a hypothesis about how  
the crime might have occurred?

MR. MITCHELL: I object the  
form. You can answer.

Q Is that true?

A Yes.

Q And then create a hypothesis  
and try to test it against the objective  
facts as you learn them; fair enough?

C. Kosciuk

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1  
2 A True.

3 Q And so you may go to a crime  
4 scene, you make measurements, and then  
5 certain items of evidence are sent out for  
6 testing, correct?

7 A Right.

8 Q And then you see whether or not  
9 you would, let's say, identify blood on  
10 various items that you recover from a crime  
11 scene, correct?

12 A At the scene?

13 Q No, no, that were recovered  
14 from the crime scene.

15 A Okay. Can you rephrase it.

16 Q Sure. In the process of doing  
17 reconstruction and creating a hypothesis as  
18 to how the crime might have occurred, that's  
19 an ongoing process; isn't it?

20 A Yes.

21 Q And so -- and you correct me  
22 where I'm wrong about this in terms of my  
23 understanding -- so in your job starting,  
24 you said, in 1973 when you started crime  
25 scene reconstruction?

C. Kosciuk

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A Yes.

Q Part of what would happen is that you would document the scene, you would make measurements, photograph items as part of it, right?

A Actually not. In Suffolk County the responsibility of the crime laboratory is to handle the evidence. The identification section was responsible, which is another unit run by the police department at that time also, is to dust, photograph and videotape the scene.

Q Isn't there an interaction between the people in charge of doing reconstruction, the homicide detectives at a crime scene, and the people from the identification unit? Do they work together?

A Sure, it's a team.

Q And so it would be -- Now, let's just take responding to the crime scene in this case; do you recall that?

A Yes.

Q In terms of working that crime scene -- First of all, as you recall, who

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was in charge of it when you arrived?

MR. MITCHELL: I object to the form. You can answer.

A I know Detective Sergeant Doyle was there and I assume the homicide sergeant at that time he was.

Q What about Detective McCready?

A Was he in charge of it? I can't answer that.

Q As far as you knew Doyle was in charge of the scene; is that right?

A As being senior officer, yes.

Q You don't know what the relationship is between McCready and Doyle with respect to who was in charge of the overall case?

A No.

Q Okay, but with homicide detective who was in charge of the overall investigation it would be part of the process for him or her to discuss matters with the detective that was in charge of the crime scene?

MR. MITCHELL: I object to the

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form. You can answer.

A I'm sorry, can you restate that.

Q Here's what I'm trying to get at. We were talking about the process of reconstruction; you recall that?

A Right.

Q You were saying that the identification unit is the one that comes in videotapes the scene, takes photographs, does dusting for prints, correct?

A Correct.

Q Right. Now, wouldn't there be an interaction between the homicide detectives in charge of the scene and people such as yourself from the crime lab that were in charge of reconstruction as to what to take pictures of?

A Actually, everybody at the scene has input into what to take pictures of.

Q Thank you. So the people from the identification unit, the homicide detectives at the crime scene, and yourself



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as the --

A Crime lab.

Q -- crime lab reconstruction  
person --

A Yes.

Q -- ordinarily would get  
together and you would discuss and make  
judgments about what different items at a  
crime scene ought to be photographed; is  
that true?

A Yes.

Q And how they should be  
photographed, correct?

A No.

Q Well --

A I have no input on how they  
should be photographed.

Q And you did not have any input  
as to how they should be done in 1988?

A No.

Q Wouldn't you agree with me that  
the way that a photograph is taken of blood  
spatter at a scene is important for purposes  
of reconstruction?

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MR. MITCHELL: I object to the  
form. You answer.

A Yes.

Q Because one of the things that  
you were doing in this case, I take it, was  
trying to reconstruct, as best you could,  
what happened based on the blood spatter  
that you would see at the scene, correct?

A That's correct.

Q And part of that analysis is  
looking at, let's say, the blood spatter on  
the ceiling in the office of Seymour  
Tankleff; you recall that?

A Yes.

Q That was something that you  
testified about?

A Yes.

Q Now, in order to take pictures  
of the bloodstains on the ceiling where Mr.  
Tankleff was found, are you telling us that  
you were not in charge of telling the  
identification people how those photographs  
should be taken?

MR. MITCHELL: I object to the

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form. You can answer.

Q I'm just asking if you know?

A I did direct them to take photographs of the ceiling and I placed the ruler against the ceiling, but I'm not looking through the lens so I don't know what they are actually capturing.

Q Let me ask you more directly. Would it be fair to say that when taking photographs of a bloodstain, wouldn't it be the best practice to both have a ruler and to take the photograph of the stain from a 90-degree angle?

MR. MITCHELL: I object to the form. You can answer.

A In my opinion, yes.

Q Right. But that wasn't done with the stains on the ceiling; was it?

MR. MITCHELL: I object to the form. You can answer.

A At the time, I didn't realize what was actually going to be produced but apparently it was not.

Q So now, just out of curiosity,

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1  
2 at the time, did you know that the proper  
3 way to take photographs of bloodstains such  
4 as those on the ceiling was to do it at a  
5 90-degree angle? Did you know that then?

6 MR. MITCHELL: I object to the  
7 form. You can answer. It's  
8 assuming that that is correct. I  
9 don't know that he said that's the  
10 correct manner.

11 MR. SCHECK: I think he did say  
12 yes to that but --

13 MR. MITCHELL: I think he said  
14 not quite as tight. He can answer  
15 the question.

16 MR. SCHECK: Sure.

17 MR. MITCHELL: Go ahead.

18 Q Are you confused at this point?

19 A A little bit.

20 Q Let me -- I know that Mr.  
21 Mitchell didn't mean that in an  
22 ill-intentioned way so let me just go back.

23 So the best practice is to take  
24 a photograph of a bloodstain from a  
25 90-degree angle; isn't that right?

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A Through education, yes.  
Developed that way, yes. As time went on,  
yes.

Q And the reason for that is  
you're taking it either -- I'm pointing to  
the ceiling here because we're talking about  
a ceiling stain.

A Normal to the surface.

Q Normal to the surface because  
you want to take it a straight up and down  
shot because that gives you the best  
opportunity to make a judgement about the  
direction of, let's say, the tails on the  
stain or something like that, correct?

A Sure.

Q And so, what I'm asking, if you  
can remember is, were you aware in 1988 when  
you worked this crime scene that that was  
indeed the best practice to take the  
photographs of the blood spatter from a  
90-degree angle, if you can recall?

A I don't recall plus I don't  
recall when the photographer was taking it.  
I can't picture that in my mind. The only

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thing I have is the results that we have before us.

Q Right. But even in looking -- you just looked at these photographs -- you would agree with me that -- and we'll go over them later -- that the photographs of the bloodstains on the ceiling they are not taken from a 90-degree angle?

A They look like yes, no, they were not.

MR. MITCHELL: I just object to the form of your question because you said he just looked at the photographs. There has been no testimony that he looked at these photographs that you talked about in the ceiling. That's all I'm saying. You assumed in your question that he has testified today that he looked at the photographs of the bloodstains on the ceiling. That's my objection.

MR. SCHECK: Sure. I was under the impression --

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MR. MITCHELL: He very well may have.

MR. SCHECK: -- that he indicated that he looked at photographs with you in preparation for his testimony.

MR. MITCHELL: I guess you're assuming.

MR. SCHECK: I did ask him about that one in particular but it doesn't matter because your recollection is that the photograph of the bloodstain on the ceiling was not taken from a 90-degree angle, fair enough?

A Yes, quite obvious.

Q And by the way, and we're going to review them in a second, but the photographs of the Arlene Tankleff crime scene where her body was found, right, there weren't rulers being placed at different places on the sheets near where the body was when those pictures were taken?

A To the best of my recollection

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there was a ruler. Our tag has a ruler in

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the photos.

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Q We'll look at some of them and

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you'll tell me.

6

Now, just to get back to what

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we were talking about, the seminars that you

8

would take from Peter Pizzola, Peter

9

DeForest, who else would give them?

10

A That was it. They also gave a

11

crime scene reconstruction seminar. I can't

12

remember where it was, but it was with the

13

Northeast Association of Forensic

14

Scientists.

15

Q Is this the Williams Homicide

16

Academy or something different?

17

A I'm not familiar with that.

18

Q So the Northeast Association of

19

Forensic Scientists would sometimes --

20

that's a voluntary professional association?

21

A That's correct.

22

Q Criminalists in the --

23

A Northeast.

24

Q -- in the northeast. And so,

25

by the way, would your personnel file have a



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list of all the different seminars you attended?

A Yes.

Q And that's something that should be in there and if they're not in there --

A Yes.

Q -- in your personnel file of the different seminars that you attended, was that kept in a list anywhere --

A I have no idea what's in my personnel file.

Q In the lab, would a list be kept of the number of different seminars that you attended?

A They should be, yes.

Q And who would keep that?

A I can't answer that but someone at the laboratory has that file.

Q Would Bob Genna be the best person to ask about that?

A Yes.

Q Now, so getting back to your understanding of crime scene reconstruction,

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1  
2 certainly, and this would be true in 1988,  
3 is that you look at all the evidence that  
4 you can get, right, from documenting the  
5 scene and then you try to create hypotheses  
6 of how the crime might have occurred; fair  
7 enough?

8 A Yes.

9 Q And that hypothesis can be  
10 what's -- It's a falsifiable hypothesis; is  
11 that true? You've heard that term before?

12 A No.

13 MR. MITCHELL: I object to the  
14 form but he answered.

15 Q Well, as part of reconstruction  
16 you have a hypothesis and then you will look  
17 at other objective evidence that is derived  
18 from testing items that are taken at the  
19 scene to see whether the hypotheses are  
20 confirmed or not confirmed; fair enough?

21 A Can you give me an example?

22 Q Sure. You may collect an item  
23 from a crime scene thinking that it is a  
24 murder weapon, correct?

25 A Yes.

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Q Based on -- And then, when it's taken back to the crime lab, whether it's let's say a knife, it would be taken apart and looked at and tested for the presence of blood, correct?

A Yes.

Q And so that would be objective evidence that would go towards confirming or not confirming a hypothesis about how the crime occurred?

A Not really because the knife in question that you take apart might not have had the blood on it.

Q But that's evidence?

A But it was the murder weapon.

Q Right. That could be then you would have to have an alternative hypothesis about why the blood is no longer on the weapon; is that right?

A Okay.

Q Is that a yes?

A Yes.

Q So in terms of reconstruction, as new evidence comes in you have to -- you

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1  
2 can confirm the hypothesis, you can refute  
3 the hypothesis, or sometimes you have to  
4 change the hypothesis; would that be fair  
5 enough?

6 A Okay. I think you're going a  
7 little further than -- My reconstruction  
8 deals with just the scene. After that, we  
9 really don't get into total reconstruction  
10 of the homicide.

11 Q Would your part of the  
12 reconstruction also deal with looking at,  
13 let's say, weapons recovered from the scene  
14 and wounds that were photographed and  
15 documented at the time of, let's say, an  
16 autopsy?

17 A No.

18 Q Okay. Now, what about you  
19 recover something from a crime scene that  
20 appears to have blood on it and then you do  
21 subsequent serology testing to see whether  
22 blood is present or not. Would that be  
23 something that might change a hypothesis for  
24 the purpose of reconstruction?

25 MR. MITCHELL: I object to the

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form. You can answer.

A Let me say this. In the crime lab in Suffolk County Crime Laboratory, it's composed of say six to seven different forte. At that time that we're speaking of in '88, I was an accident reconstructionist although I had expertise in the analysis of drugs and of firearms. From about 1974-and-a-half to '83, I was a firearms expert and that was my dealings in the laboratory plus crime scene reconstruction or crime scene -- let's say -- reconstruction going out to the scene, recovering the evidence and bringing the evidence back to the laboratory.

If there was firearms involved and I was at the scene, that would have been my weapon and I would have analyzed the weapon. Blood trace evidence would all go to different sections within the laboratory and there would be different experts.

Q In 1988, who, at the Suffolk County Laboratory, was the expert in blood spatter analysis?

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A I guess it would be Bob Genna  
3 and myself at that time.

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Q And you testified at the  
5 Tankleff trial about the blood spatter  
6 analysis?

7

A Yes.

8

9

10

Q And that the crime scene in  
9 this case you were the person that was  
10 charged with the blood spatter analysis?

11

12

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A I don't recall doing a  
12 reconstruction at the scene of the blood  
13 spatter.

14

15

Q But to your knowledge, did  
15 anyone do that?

16

A No, not to my knowledge.

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19

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Q And subsequent to just working  
18 the scene and documenting it, did anybody  
19 look at all the evidence and try to do a  
20 reconstruction of the blood spatter?

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A I looked at the spatter at the  
22 Tankleff scene, at the Tankleff office, and  
23 determined the directionality of the  
24 castoff, if that's what you would call a  
25 reconstruction.

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Q Is that what you would call reconstruction?

A No, I just determine the directionality of the blows and based on the stain in the ceiling.

Q Would you call that blood spatter analysis?

A I would just call it analysis of the castoff and determine the angles.

Q Based on all of your learnings in this field now, would it be fair to say that blood spatter analysis is what is known as crime scene reconstruction?

A At this time and date, yes.

Q In 1988, was blood spatter analysis also known, to the best of your knowledge, as part of something that was known as crime scene reconstruction?

A Not really. I know that Dr. Perzola was doing a lot of research as far as the projection of blood and the blood dynamics. There was a fairly new doctor, Dr. MacDonell in Connecticut was also doing research in that area. It was a new field.

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Not until about 1997 did the reconstruction

3

field and bloodstain pattern analysis

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develop.

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Q As far as you're concerned?

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A Well, yeah, as far as I'm

7

concerned.

8

Q Now, you mentioned Dr. Herbert

9

MacDonell. Are you familiar with his book

10

Flight Characteristics of Bloodstain

11

Evidence?

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A Yes.

13

Q Did you read that book?

14

A I did.

15

Q When did you read that book?

16

A When we started getting

17

involved in bloodstain patterning.

18

Q So that would be when?

19

A Sometime in the seventies. I

20

don't remember what date.

21

Q That book was published in

22

1975, right?

23

A Yes.

24

Q Have you ever gone into the lab

25

and created blood spatter yourself?



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A Yes.

Q And tell us about that.

A I've done at the crime lab high velocity blood spatter looking at both the projected blood and the blow back from a muzzle, muzzle to garment distance determination, the size of the caliber to the blood spatter analysis, both the projected blood and the blow back.

Q When did you --

A -- the velocity.

Q When and where did you do that yourself?

A In the crime laboratory.

Q Would you do that -- Do you remember the first time you did that?

A You're asking for a date?

Q Yeah. What period of time were you doing that?

A Probably around when we were attending those courses.

Q So that would be when?

A In the early -- I guess it was early eighties or early seventies, somewhere

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2 in there. I can't exactly remember.

3 Q So, in other words, you went in  
4 the lab yourself and would fire weapons and  
5 create high velocity blood spatter?

6 A Yes.

7 Q Using what? Animals?

8 A Hand guns. Oh, yes.

9 Q Pigs?

10 A Oh, no, no. Sponges no live  
11 animals. Sometimes we used horse blood as  
12 the liquid agent.

13 Q And when you say "we," it's  
14 yourself and Bob Genna?

15 A Well, Bob was involved in some  
16 of -- The testing, because I was in  
17 firearms, I dealt with that. I can't recall  
18 if Bob was there or not at the time. We did  
19 do testing at the lab, shoe prints and  
20 blood, we did some of that.

21 Q When you say "we," if you can  
22 tell me who else besides yourself.

23 A Probably Bob Genna and myself  
24 and some of the people from the trace  
25 evidence section.

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Q Do you remember who that might be?

A Don Dolan I believe at that time.

Q Now, can you define blood from the perspective of a blood pattern analyst?

Does that question make any sense to you?

A No. Can you rephrase that.

Q Sure. I mean are you familiar with how blood spatter experts would define blood?

A Not really.

Q Have you ever heard a definition of a non-Newtonian viscoelastic fluid? Have you ever heard that kind of phrase?

A Yes, I did.

Q That the blood would be -- you would be studying the behavior of blood as fluid; how it responds to different forces; fair enough?

A Yes.

Q And does it have more or less

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energy than a drop of water or a drop of

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milk; do you know, blood?

4

A More or less energy?

5

Q Yes.

6

A Is it being propelled? I can't

7

answer your question because I don't

8

understand it.

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Q Well, in terms of the

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properties of blood and when it's being

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propelled, all right, does it have more or

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less energy than let's say a drop of water;

13

do you know?

14

A I would say of the same volume

15

the blood would have the more energy.

16

Q What about milk?

17

A I don't know the density of

18

milk compared to blood.

19

Q Would part of the blood spatter

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analysis have to do with coagulation of

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blood?

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MR. MITCHELL: I object to the

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form. You can answer.

24

A Would blood spatter analysis --

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Q Yes.

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A Yes.

Q And drying?

A Yes.

Q And changes over time?

A Yes.

Q Okay. And can you distinguish for us between a swipe, a wipe and a smear?

A At this time, no. I would be guessing.

Q You recognize those as terms that are used in blood spatter analysis?

A Yes, I do.

Q Okay. Now, I think you reviewed your testimony here at the trial, right?

A Parts of it, yes.

Q And did you review the part where you were talking about low velocity blood spatter, medium velocity blood spatter and high velocity blood spatter?

MR. MITCHELL: I object to the form.

A I don't remember reviewing it.

Q Okay. How would you define low

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velocity blood spatter?

A If my memory serves me correctly, below 5 feet per second would be low velocity or the force of gravity. Medium would be from 5 to about 25 feet per second, and high velocity would be about or somewhere in the area of over 100 feet per second.

Q Would it be fair to say that medium velocity blood spatter is caused by the affect of blunt instruments?

MR. MITCHELL: I object to the form. You can answer.

A Can you rephrase the question?

Q Can you describe the -- Would you expect to see medium velocity blood spatter being caused by the affect of blunt instruments on a blood source?

A Yes.

Q And that's the kind of thing that you were analyzing in 1988 when you went to crime scenes?

A Yes.

Q You would be looking for medium

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velocity blood spatter, yes?

A Yes.

Q And you would be -- And if you saw it, you would be creating hypotheses for reconstructing purposes about the possibility of a blunt instrument being used against a blood source at a scene?

Is that a confusing question for you?

A Other questions are coming to my mind. If I only saw medium spatter blood would I rule out any other instrument or a blunt instrument, is that what you're asking me?

Q No, but I'll get back to that. We can look at your testimony at 1651, line 14, I'll read you the question and answer and see if this helps you.

"Q. You say that the high velocity spatter is consistent with gunshots. The medium velocity and lower velocity spatter to which you're referring to, what type of motion or injuries cause that type

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of spatter?

A. That type of spatter can be caused by blunt instruments."

A Right, medium and low. You said before only medium. But even --

There's a point where with a blunt instrument that you can actually cause or slide into the higher velocity area. It would fall out of a medium velocity.

In other words, the bloodstain pattern or the bloodstain -- there could be individual patterns that are much smaller than like 4 millimeters which would fall into the medium velocity range.

Q Now, getting back to your work in 1988 in the Tankleff crime scene, do you recall when you got there?

A That morning, yes.

Q About when?

A Shortly after 8 o'clock.

Q And by the way, how do you know that?

A I remembered because I responded from home.



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Q And when you got there, tell us what happened as best you can recall?

A What happened what?

Q What you did and what you recall seeing?

A I went to the scene and I got there about 8 o'clock. Detective McCready was there and I sat and waited for the rest of the crime scene to respond. I checked in with the officer at the blocked-off Tankleff driveway.

Q When you say Detective McCready was there, where exactly did you meet him?

A I can't answer that. I don't remember exactly where I met him. Did he come to me; did I go to him? I can't remember.

Q When you encountered him, did he tell you that he had done a walk-through of the crime scene yet?

A No.

Q Do you know if he had done a walk-through of the crime scene yet?

A No.

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Q Subsequent to that what, if anything, did he tell you about the crime scene as best you can recall?

A Other than Mr. Tankleff was removed, and that there was a victim in one of the bedrooms.

Q To the best of your recollection, what happened next after you spoke to Detective McCready and he told you that Seymour Tankleff had been removed and there was another victim in the bedroom?

A Well, after speaking to him he went about his business. I sat in my car and waited for the crime laboratory to respond, and then we had to wait for the identification section to respond coordinating with, I guess, Detective Sergeant Doyle, how we would go about handling the scene.

Q Was Doyle there when you got there?

A Not to my knowledge. I don't know where he was at that time.

Q Okay. When you said McCready

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went about his business, what do you mean by

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that?

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A Well, I waited in my car. I

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don't know what he did after that.

6

Q So you don't know if he then

7

walked through the crime scene?

8

A No.

9

Q Did you ever learn from him

10

that he had walked through the crime scene?

11

A I assume -- Well, no, I did

12

not.

13

Q When you say you assume, did he

14

ever -- Obviously, when you first arrived

15

there he told you what was inside, right?

16

A Right.

17

Q And did there come another time

18

when he told you or anyone else any

19

hypothesis or theories he had about what

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might have happened?

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A No.

22

MR. SCHECK: I'm told that

23

there is five minutes left on this

24

tape.

25

THE VIDEOGRAPHER: Yes.

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MR. SCHECK: And then right  
after that we'll take a short break.

Q So you were saying before that  
you had worked cases before the Tankleff  
matter with Detective McCready?

A I know I've worked cases with  
Detective McCready. I don't know if they  
were before or after. I don't even remember  
when he came into Homicide. But if he was  
in Homicide and he had a homicide and called  
the laboratory and I was on call, yes, I  
did.

Q Other than this case, do you  
remember any particular case that you worked  
with McCready?

A No. I can't recall.

Q Are you familiar with, as of  
1988 and the time you arrived at the  
Tankleff crime scene, Detective McCready's  
reputation as a homicide detective?

MR. MITCHELL: I object to the  
form. You answer.

A Can you repeat.

Q Were you familiar with his

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reputation, let's say, among your colleagues at the crime lab as a homicide detective?

A Not really.

Q Was he regarded as a knowledgeable homicide detective?

A In my book, yes.

Q Somebody that -- A knowledgeable homicide detective would have a working knowledge of blood spatter?

MR. MITCHELL: I object to the form.

A That would depend on the individual.

Q Well, what about McCready?

MR. MITCHELL: I object to the form.

A I don't know.

Q You never discussed blood spatter to the best of your recollection with McCready?

A No.

Q In this case or any other case?

A McCready or anybody, any other detective?

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Q Yeah.

A At any time?

Q Yeah.

A I guess I must have, sure.

Q Well, I think you told us

before that at this crime scene and at other crime scenes what would happen is that the people from the crime lab and the homicide detectives would get together and discuss what should be photographed and discuss how the crime scene should be handled, correct?

A No, I never said that.

Q Didn't you say before that there was some discussion that people had as to what should be photographed and to try and come up with a reconstruction of what happened?

A No. Each individual at the scene would request ID to take the photographs that they need. If a homicide detective wanted a photograph of this, I would say take this, take that. I would tell them I want the ceiling shot, I want this shot, I want that shot.

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Q But when discussion was had about what shot should be taken, I think you told us before, I may be wrong, that there would be interchange between the homicide detectives and yourself as the blood spatter expert from the lab about why certain shots should be taken. There would be an interchange, a discussion about why people were asking that certain things be documented at the scene?

MR. MITCHELL: I object to the form. You can answer.

A In my opinion, it's quite obvious if I have a piece of evidence and I have a tag there I want that evidence documented with a photograph.

MR. SCHECK: We'll take a break now.

THE VIDEOGRAPHER: Off the record at 11:15 a.m.

(At this time, a brief recess was taken.)

THE VIDEOGRAPHER: We're back on the record at 11:40 a.m. This is

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the beginning of Disk 2. You may proceed.

Q So let's get back to September 7, 1988. I think where we left off is that you had arrived at the crime scene at about 8:00, you saw McCready but you were waiting in your car for people from the identification unit to arrive; is that right?

A My people and identification people.

Q And you said McCready had gone off to do his business, correct?

A Right.

Q Mr. Tankleff is now in the room at this point; do you see him?

A I do recognize him. I don't have my long-distance glasses.

Q Did you see him there that day when you arrived?

A Early in the morning at one point, yes, I did.

Q When you say McCready went off to do his business, I could show you in his



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deposition where he indicates that he made two walk-throughs of the crime scene.

A Okay.

Q Does that refresh your recollection, in any way, of McCready telling you that he had walked through this crime scene?

MR. MITCHELL: I object to the form. You can answer.

Q Any recollection of that?

A I don't know. Did he do it by himself? Did he say I did it with him?

Q No, no, he personally did it.

A I don't know.

Q That's the question I'm trying to ask you.

A I don't know what he's calling the walk-through neither. I know what I call the walk-through.

Q What do you call the walk-through?

A Where Sergeant Doyle, myself, and Sergeant Fini from the Identification Section led by me we entered through the

C. Kosciuk

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front door and I cleared a path first to Mrs. Tankleff's room and then down across the house through the office area so that way ID can photograph and video of the scene.

Q Let's just take it in order as best you recall. So you don't know what McCready did when he left to "do his business" and you were waiting in the car; is that correct?

A That's correct.

Q Okay. So what's the next thing that you remember doing?

A With McCready?

Q No, yourself. I have you in the car?

A I waited in the car and prior to Laboratory and Identification Section walk and Homicide walking through prepping the scene for the Identification Section McCready and I walked the perimeter of the backyard.

There was grass -- There was a dewy situation so by walking the perimeter

1

C. Kosciuk

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of the backyard we eliminated any footwear

3

or tracks leading away from the house which

4

immediately would show in the dew as ours

5

did.

6

Q All right. And you did this

7

walk-through around when?

8

MR. MITCHELL: The walk around

9

the house, you mean?

10

MR. SCHECK: Yes.

11

A That morning.

12

Q But you arrived at 8:00?

13

A I don't have a time. I can't

14

recall what time that was. I just remember

15

doing that.

16

Q Okay. But if it helps, you

17

began your walk through of the house at

18

around 9:30?

19

A That's right it would be before

20

that.

21

Q So about just a few minutes

22

before that you would say?

23

A I don't remember exactly.

24

Q So when you did this walk

25

around the house with McCready, did he share

C. Kosciuk

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with you at that time any of his observations about what was inside the house?

A No.

Q Did he talk with you about his suspicions that Mr. Tankleff might have killed his parents?

A No.

Q Did he ever share with you that one of his suspects right away was Mr. Tankleff?

A No.

Q He never said anything like that to you?

A No.

Q So you did the walk-through and McCready never expressed any suspicions to you about Mr. Tankleff, correct?

A That's correct.

Q And he never told you anything about what you were going to find inside the house?

A McCready, I don't believe so. Sergeant Doyle advised us that Mrs. Tankleff

1

C. Kosciuk

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2

was still in the house.

3

Q When did Doyle arrive at the

4

scene to the best of your recollection?

5

A I don't remember. You would

6

have to check the log.

7

Q Okay. So you remember doing

8

this walk around the house with McCready,

9

then what happened next?

10

A Then I waited.

11

Q Tell us everything you can

12

remember from that morning in the order in

13

which it happened.

14

A I waited for the Identification

15

Section and the rest of the lab personnel.

16

Q Just if you can name them that

17

would be helpful?

18

A I thought we did that already.

19

Q Keep on doing it.

20

A Okay. It was Robert Baumann,

21

the serologist, forensic scientist from the

22

crime lab and forensic scientist George Reif

23

from the crime lab. That was the crime

24

scene team that day. And then from ID was

25

Sergeant Fini, Detective Schaefer and

C. Kosciuk

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Detective Mongan, I believe it is.

Q So they all arrived?

A Right.

Q Then what happened?

A And then at 9:30 with Sergeant Doyle we entered through the front door.

I'm clearing the way into the bedroom. I told them don't go any further than about four feet into the master bedroom.

Q Now, when you are assembling this team to do this, this is your walk-through, right?

A Yes.

Q It's your walk-through, correct?

A Yes.

Q What did Sergeant Doyle, at this point, tell you, if anything, about whether Mr. Tankleff was a suspect or anything that he and/or McCready were thinking about how this crime might have occurred?

MR. TIPALDO: Objection to form.

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1  
2 A Not to my knowledge, never  
3 discussed it.

4 Q Nothing was ever discussed like  
5 that?

6 A No.

7 Q Did you learn between the time  
8 you arrived at 8 o'clock and the time you  
9 were doing the first walk-through at 9:30  
10 that Martin Tankleff himself had said that  
11 he believed that Jerry Steuerman was  
12 responsible for this murder?

13 A I can't answer that. I don't  
14 remember if that ever came up. I know the  
15 name Steuerman came up sometime during the  
16 day, but I don't know what time.

17 Q Do you remember being told  
18 before you made this walk-through that there  
19 had been a card game the night before?

20 A Yes, I think so. Yes.

21 Q That would be relevant to your  
22 evaluation of the crime scene?

23 A Yes, but exactly what time I'm  
24 not sure. My purpose at that time was to  
25 clear a path for the Identification Section

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1  
2 so they would not trample any physical  
3 evidence while they do the video of the  
4 scene and then still of the scene to  
5 document it as we find it at that time.

6 Q Had Doyle, to your knowledge,  
7 been through the scene before you were doing  
8 this walk-through at 9:30?

9 A I can't answer that. I don't  
10 know.

11 Q Okay. So tell us what you all  
12 did.

13 A That's what we did.

14 Q You started by saying going  
15 into the master bedroom.

16 A Right. We entered through the  
17 foyer. We went down the hall east.

18 Q You're pointing here --

19 A Well, I'm not pointing I was  
20 just --

21 Q I thought -- I'm sorry.  
22 Exhibit 1 is the model, right?

23 A Right.

24 Q Now, can you show us on this  
25 model. I think it says Plaintiff's



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Exhibit 1 the right-hand corner, right?

A Yes.

Q And in the far left of the picture that is the master bedroom where Arlene Tankleff's body was, correct?

A Yes.

Q All right. So could you --

A You want me to hold it up to the camera?

Q Yes, I'll try to --

A I'll try to do it backwards.

MR. SCHECK: Can you get him tight on that? I don't know.

THE VIDEOGRAPHER: Yes.

A We entered through the front door.

MR. SCHECK: Can you see that?

THE VIDEOGRAPHER: You have to hold it up.

A Then I can't see.

THE VIDEOGRAPHER: Just for a couple of seconds.

A We went through the front door. We went down the hallway and we looked into

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1 the master bedroom which is in white. They  
2 went up as far as approximately four feet in  
3 and I said, stop there. Don't go any  
4 further into the room until we can clear a  
5 path later on. Then we pulled out, we went  
6 through the dining room and over to the  
7 office area which is way over here. We cut  
8 through here, the hallway (indicating).

9  
10 Q Did you go through the kitchen  
11 at that time?

12 A We might have gone through the  
13 living room and the kitchen -- I can't  
14 remember exactly now -- and came out -- We  
15 were heading towards the office area. It's  
16 hard to see the hallways here, but I believe  
17 we did do something like that. Come down  
18 this hallway and then you can cut through  
19 here where the red carpet is and enter the  
20 office area.

21 Q And the office area is where  
22 Mr. Tankleff's body was?

23 A That is correct.

24 Q Now, you had already been told  
25 where the bodies were, correct?

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1  
2 A I believe Sergeant Doyle had  
3 known that, yes.

4 Q Because Sergeant Doyle was  
5 telling you where to go first and where to  
6 go second, correct?

7 A Yes. I guess we knew that.  
8 Well, he did say that she was in the master  
9 bedroom but we ended up going towards the  
10 master bedroom and he would probably have  
11 directed us that way.

12 Q And you don't remember anything  
13 that Doyle told you about whether he had  
14 suspicions at that time that Mr. Tankleff  
15 might have committed this crime?

16 A No.

17 MR. TIPALDO: Objection to  
18 form.

19 Q Were you aware that Mr.  
20 Tankleff, Marty Tankleff, was going to be  
21 taken in for questioning?

22 MR. MITCHELL: I object to the  
23 form. You can answer.

24 A No.

25 Q But you did become aware at

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some point in time that he had been brought

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in for questioning and that he had given a

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confession?

5

MR. MITCHELL: I object to the

6

form. You can answer.

7

A I'm trying to think. I think

8

late, late that evening I did find out that

9

they placed him under arrest.

10

Q While we're getting these

11

notes, so you went through and did this

12

first walk-through, correct?

13

A Yes.

14

Q And you said you only went a

15

few feet into the master bedroom, correct?

16

A Correct.

17

Q But you were able to see the

18

body of Arlene Tankleff?

19

A No.

20

Q Were you able to see the bed?

21

A I could see the bed and I

22

believe you could see her head.

23

Q Okay. And then, you took the

24

path you described and went into the office,

25

correct?

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A Correct.

Q What did you do next?

A Then we all backed out of the house and we allowed ID to do the video and all the stills of the house which they did and completed about 2 o'clock.

Q Okay. Now, at this point in time, was Detective Doyle, to the best of your understanding, the detective that was in charge of this crime scene, homicide detective?

A He was the sergeant I was dealing with, yes.

Q All right. And now I'm going to mark as Exhibit 2 for identification here, steno book notes from Detective Doyle which would be SCDA 2699 through 2715.

(Whereupon, Plaintiff's Exhibit 2 was marked for identification.)

MR. MITCHELL: Sure.

Q Now, would it be fair to say that while at the crime scene, as the homicide detective on the scene, Doyle had a -- it would be standard practice to have

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the steno book and to write contemporaneous notes about what was happening when it was happening, correct?

A Yes.

Q That was the normal way it worked, correct?

A Yes.

Q That would be the responsibility of Doyle at this particular crime scene as you understood it?

A I don't know what his responsibilities were at that crime scene. He was the supervising sergeant.

Q Right. And as far as you know on the homicide detective side, he was the person that I think your termed you were working with, correct?

A Yes.

Q Right. And so --

A One of the homicide personnel present.

Q Well, who else?

A I stated that before. There was Detective Legazza, Detective Anderson,

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Detective Pfalzgraf at that time, I believe,  
3 and Detective Bonds.

4

Q Right. But as far as you knew

5

it was Doyle who was the person that seemed

6

to be in charge from the Homicide point of

7

view of the crime scene, the person you were

8

working with?

9

MR. MITCHELL: I object to the

10

form. You can answer.

11

Q I think you just told us that;

12

didn't you?

13

A We work with all of them but he

14

was the senior homicide detective.

15

Q So it would be fair to say that

16

he was the person that you were taking

17

direction from in terms of homicide?

18

A No, we take direction from all

19

the Homicide personnel.

20

Q He was the senior guy on the

21

scene?

22

A Yes.

23

Q Now, I'll ask you to turn to

24

Page 2713.

25

A (Complying.)

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Q And you see that he has a note  
3 at the top of this page. "Per McCready  
4 12:28." Do you see that?

5

A Yes.

6

Q And it reads, "Martin Tankleff  
7 confessed then cut (underlined) mother's  
8 throat, cut father's throat with the knife  
9 that's near the watermelon in the kitchen,"  
10 (and knife is underlined and near the  
11 watermelon in the kitchen is underlined)  
12 right?

13

A Yes.

14

Q "Did mother first, hit him with  
15 a," (and then it says, it appears to be a  
16 barbell crossed out) and then it says, "the  
17 bar part of a dumbbell (underlined), it is  
18 in his room. He was nude, (underlined.)  
19 Said he took a shower in the --

20

MR. MITCHELL: Bath.

21

Q -- hall bath near his room."  
22 You see that?

23

A Got it.

24

Q And then it has with an  
25 asterisk and underlined "check the traps!"



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A Yes.

Q And it says, "check the  
toilets." Toilets underlined. "Says he  
washed everything off in the shower." And  
then there is an arrow towards that line,  
the shower, and then it says, "hall bath.  
He called 911 from his mother's phone  
(mother is underlined). "Look for blood on  
phone." And then at the bottom it says, a  
line going to mother's it says, "her  
bedroom," correct?

A Yes.

Q And then if you go -- It's  
double-sided and it says, "confessed as of  
11:56. Will start written after they get  
photo," and then there is an asterisk, "has  
blood on his shoulder." Next it says, "Will  
probably go on video." And then it has,  
"One. Linen closet. Two. Marty's bedroom  
for blood and dumbbell. Talk to Jabo." Who  
is Jabo?

A I don't know.

Q You remember a district  
attorney named Jabo being around there or

1

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2

involved? You ever hear of him?

3

A No.

4

Q "Garage doorknob" is number

5

three. Number four, "list on refrigerator"

6

and number five, "knife near watermelon;"

7

you see that?

8

A Yes.

9

Q Now, having looked at this --

10

MR. MITCHELL: Barry, you did

11

misspeak regarding you said also

12

check you said the toilets. It's my

13

impression that word says towels.

14

MR. SCHECK: Towels. I take

15

your correction. Thank you very

16

much.

17

MR. MITCHELL: Okay.

18

Q Does this refresh your

19

recollection that sometime around 12:28 on

20

September 7, 1988 you were informed by

21

Detective Doyle or one of the other

22

detectives that Mr. Tankleff had confessed

23

and there were certain -- and these details

24

that I have gone over with you were part of

25

his confession?

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MR. MITCHELL: I object to the form.

MR. TIPALDO: I join.

A No.

Q You don't remember?

MR. TIPALDO: Objection.

A First of all, I don't know where Sergeant Doyle is when he's writing these notes. I don't even know if he's at the scene. I don't know where he is.

Q Well, you see here that these notes are at 12:28? I'm asking you?

A Yeah, but I know there was no phones used in the house.

MR. MITCHELL: Detective, he is just asking if it refreshes your recollection, his question.

A Repeat the question.

Q Does it refresh your recollection that sometime around 12:28 you heard from Sergeant Doyle or any other detective at the crime scene that Mr. Tankleff had given a confession and that requests were being made to check certain

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evidentiary items in the house, right, given what he said in his confession?

A I don't remember any of that. I don't remember finding out until later on that day Friday evening that these items were involved. And I can't remember if Mr. Tankleff or anybody told me that he confessed.

Q Well, so you're --

A That would be dealing more with Homicide and I don't know if they would advise us of that as we're proceeding through the scene processing it.

Q Wouldn't it be part of the ordinary course of business when investigating a homicide case for you as the person in the crime lab that was doing reconstruction and blood spatter analysis in 1988 to be informed by the homicide detectives as to their hypothesis about how the crime might have happened?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: I join.

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C. Kosciuk

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A I guess that would depend on the detective. A lot of homicides we're not told everything, no.

Q You know that Mr. Tankleff gave a confession that was written down to Sergeant McCready at around 11:00 that morning?

A No.

Q Well, you recall that you were directed during the day by Detective Barnes, the scene detective, to check particular areas within the house?

A Yes.

Q Tell us how and when that happened?

A That evening late after we are finished and just before we responded back to the lab, so it would have been somewhere around 8:00 to 8:30 that evening we were advised to pick up the items that you discussed here.

Q Which items, the ones that I just recited as part of the confession?

A Right, yes.

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Q Well, let's approach it this way. So you say that after 2 o'clock Identification had finished photographs and videotaping the crime scene; is that right?

A That's correct.

Q And then your work began?

A Yes.

Q So what did you do?

A At 2 o'clock we proceeded into the master bedroom.

Q Who is we?

A We would be Detective Reich and Detective Forensic Scientist -- not Detective Reich. Forensic Scientist Reich and Forensic Scientist Bob Baumann. We proceeded into the master bedroom and started to clear or collect items of physical evidence that we felt were pertinent to the scene. We placed evidence tapes on those items and we proceeded to remove any physical evidence that might be damaged if anyone moves the victim.

Q You said you were collecting items of evidence that you thought were

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relevent to the scene, correct?

A Yes.

Q And how were you determining what was relevent to the scene?

A Loose hairs, obviously anything that we felt was not in place or out of place at that scene. Hairs, broken hairs, anything that could be moved or destroyed when Mrs. Tankleff was taken by the medical -- or examined by the medical examiner and then taken by the medical examiner.

Q And are you telling us that prior to learning -- I think you said about 8 o'clock -- that there were certain items that you should inspect and collect that no homicide detective told you anything about their theory that Mr. Tankleff, Martin Tankleff, had committed this crime and the way in which he committed?

MR. MITCHELL: I object to the form. You can answer.

A No.

Q So you were deciding what was

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relevant at the crime scene for you to identify and collect without any knowledge of Martin Tankleff's confession?

A That's true. Yes.

Q Okay. So tell us what you did. You first went where?

A I thought we just did that. We went into the master bedroom. We collected items of physical evidence, hairs, and anything that could be destroyed prior to the medical examiner entering the room and removing Mrs. Tankleff.

Q Okay. Now, let me just show you a few photographs. Let's start with of the master bedroom.

MR. SCHECK: Let's mark this as -- Maybe the smart way to do this so we can refer back to these things is let's mark a series of photographs and let's put an exhibit number on them as Exhibit 3.

Let me mark this as Exhibit 3 and then I will number each photograph, each of these copies of



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photographs, and we'll try to --  
I'll mark them in the bottom  
right-hand corner.

THE VIDEOGRAPHER: Going off  
the record at 12:08 p.m.

(Whereupon, Plaintiff's  
Exhibits 3 through 7 were marked for  
identification.)

THE VIDEOGRAPHER: Back on the  
record at 12:25 p.m. You may  
proceed.

Q Now, we've marked a series of  
exhibits here that we're going to go  
through, Detective.

Exhibit 3 were photographs of  
the master bedroom, Exhibit 4 were three  
photographs of the kitchen area and the  
so-called watermelon knife, and Exhibit 5  
were photographs of the office. Exhibit 6  
that we'll get to in a few minutes is a  
supplemental report by James McCready.

And now, Exhibit 7, which may  
help you, is a report from a Kenneth  
Christopherson, a special agent, dated

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1  
2 July 21st, 2008 concerning an interview that  
3 was conducted with you at your home by  
4 Special Agent Gerald Blavin and Special  
5 Agent Christopherson on July 17, 2008. I'll  
6 given you that right now.

7 This is the interview that we  
8 were talking about before when the State  
9 Investigation Commission came and spoke to  
10 you about this case in 2008, right?

11 A Eight, yes.

12 Q That was -- I think you told us  
13 before, other than talking with Mr. Mitchell  
14 in preparation for this deposition a few  
15 days ago, that's the last time that you ever  
16 discussed in any detail or reviewed this  
17 case with anyone, correct?

18 A He does not say where this took  
19 place.

20 Q Look at the very beginning.

21 A At his home. I got it. Okay.

22 Q That's your home, right?

23 A Yes.

24 Q We won't mention the address.  
25 That's secret.

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Now, just calling your attention now to Page 2 of Exhibit 7, and it's right under crime scene, there's a notation here that -- and I'm starting in the middle of the second paragraph on the page. "Kosciuk stated that while he was waiting for the identification unit personnel to arrive he was approached by Myron Fox who introduced himself as Tankleff's family attorney and offered his business card. Kosciuk said that he did not accept the card and referred Fox to speak to Detective McCready." Do you now recall that happening?

A Yeah, I do but I think he said business attorney.

Q Okay. That was something that when we were discussing what happened you seemed to have forgotten here, correct?

MR. MITCHELL: I object to the form. You can answer.

A Yes.

MR. TIPALDO: I join.

Q And then you say here on

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Exhibit 7, "Kosciuk did not recall the particulars but he later learned through "the grapevine" that Fox was caught "dumping paperwork" in connection with this case."

Can you explain what that means?

MR. MITCHELL: I object to the form. You can answer.

Q To the best of your knowledge?

A I was called to court to testify about Mr. Fox being there. That was in question and I don't know who I was talking to but that was the reason that we were there, that he denied being there and something about he was caught destroying files or something to that affect or dumping paperwork.

Q This was at or around the time of trial?

A Yeah, right before the trial.

Q Okay. Now --

A This trial?

Q This trial, the trial with Mr. Tankleff.

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A No, when ever I had that hearing with Mr. Fox.

Q I'm sorry. In other words, you're saying that this reference to Mr. Fox "dumping paperwork" in connection with this case had to do with the State Investigation's Commissioner investigation of 2008; is that what you're saying?

MR. TIPALDO: Just note my objection. It could be a number of different things.

MR. SCHECK: I'm asking you.

A I have no idea what paperwork they were talking about. I actually was called into court to testify that Mr. Fox was at the Tankleff scene and that he handed a business card, which I told him that I'm not the investigating officer, go up and see Detective McCready.

Q Was that testimony before the criminal trial having to do with the motion to suppress?

A Yes.

Q That's what I understood your

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answer to be. That was okay.

Now, looking at the third paragraph on this page, the report, you said, "he stated --

A Wait, I'm lost. Page 3 or 2.

Q Page 2.

A Got it.

Q All right. After the identification unit came to the scene, set up their cameras and they took the first videos of the crime scene, okay, included by taking still photographs at 11:31 a.m. -- I'm reading exactly, "subsequently, laboratory members photographed and assigned tag numbers to each item of evidence collected. He added that all the evidence was segregated throughout the crime scene and laboratory tags were placed on items numbered 1 to 44. He added that Bob Genna, the crime lab director was present at the scene and "did forensics" on the interior walls and all related matter." Do you see that?

A Yes.

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Q Does that refresh your recollection as to what happened on September 7, 1988?

A I do remember Genna there but I don't know what time he got there or what. At that time he was the deputy director of the laboratory or maybe -- No, no, I don't think he was in '88. He was a trace evidence person, trace evidence expert.

Q Do you know what -- You're quoted as saying "did forensics" on the interior walls, what does that mean?

A What we're looking at here is just general. I'm just talking to the investigator. It was just conversation.

Q Okay.

MR. MITCHELL: I just need to clarify something. I may be nitpicking but you said he was quoted here as "did forensics on the interior walls," and I know the document speaks for itself but that the quote is only around the words "did forensics."

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MR. SCHECK: That's correct.

MR. MITCHELL: And then, on the interior walls and related matter is not attributed to the quote to Detective Kosciuk.

MR. SCHECK: Yes, that's correct.

Q Let me see if I understand this directly in terms of the chain of command at the crime lab. On September 7, 1988, did you report to Bob Genna?

A No.

Q Who did you report to?

A At that time in '88 it's either Mr. Varinelli or Mr. Crispino was a director. I can't remember which. I think '88 Varinelli was but I'm not positive.

Q And Vince Crispino was head of the crime lab?

A Yeah, also. And I'm trying to think what exactly year he took over and I can't remember.

Q In terms of eventually you testified for the prosecution in the



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criminal case, correct?

A Yes, I did.

Q All right. And you never filled out any reports prior to your testimony about your analysis of the blood spatter, correct?

MR. MITCHELL: I object to the form. You can answer.

A No, I never wrote a report.

Q That wasn't the practice of the crime lab that when you did a blood spatter analysis you would write out a report about what your findings were? It did not work that way, right?

MR. MITCHELL: I object to the form. You can answer.

A There was no report written about the -- In the office area, the cast off?

Q Yes.

A No.

Q You only testified at the criminal trial about your blood spatter interpretation of blood spatter patterns in

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the office, correct?

A Yes.

Q You did not testify about any blood spatter patterns or any reconstruction of what went on in the master bedroom where Arlene Tankleff was found; did you?

A No.

Q Okay. Now, how did it come -- Can you describe for me how it came to pass that you wound up offering your blood spatter testimony at this trial? How did that evolve?

MR. MITCHELL: I object to the form. You can answer.

A It evolved because I was the senior investigator at that time from the laboratory at the scene. We knew, first of all, that the desk and the chair were moved by emergency services.

Q When you say "we" --

A Members of the laboratory, Mr. Baumann and George Reich, were pushed aside so to look to try to attempt to see what happened, at that time, we moved the desk

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back to its original position and lined the chair up based on blood dripping from the chair and the spatters on the chair and also the impressions on the rug.

And then looking to the ceiling it was quite obvious that there was one stroke or bludgeon or castoff in a northerly direction from south to north and then from behind the chair about two casts at slightly different directions but originating from the chair onto the ceiling indicating that that originated from the chair.

Q I understand you documented that and you made that interpretation, correct?

A Right.

Q Now, did you make that interpretation that day or some subsequent day after examining the photographs?

A No. That would be the second day we're there. I believe that was -- You know, I can't remember if that was that day or the next day, Thursday. We were also back at the scene the next day.

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Q Who did you report that to if that was your interpretation of the blood spatter pattern in the office?

A Well, the Homicide scene officer was there and at that time I'm not sure who it was. It was either Detective Pfalzgraf or Detective Bonds or one of them. I can't remember who was doing their notes.

Q But did somebody ask you to do that reconstruction?

A No, I did it on my own.

Q Is there any -- Did you ever do a reconstruction looking at blood spatter of what you thought happened in the master bedroom?

A I'm sorry. Repeat that.

Q Did you ever do a reconstruction of what you thought happened in the master bedroom?

A No.

Q Why not?

MR. MITCHELL: I object to the form. You can answer.

A We didn't.

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Q Well, in the ordinary course of your work at the Suffolk County Crime Lab doing crime scenes, was it your practice to look at the different crime scenes and formulate as best you could an interpretation of the blood spatter pattern and then communicate it to the homicide detectives? Is that what the standard practice was?

A Looking into the bedroom on the bed there was no castoff except there was one stain on the --

Q I'm asking a different question.

A Wait, wait. I'm trying to explain to you.

Q No, no, no, I'm asking about what the custom and practice was in 1988. You see what I'm saying?

A Oh.

Q Ordinarily, when you respond to a crime scene as the blood spatter expert, was it your custom and practice to report to a homicide detective or Vince Crispino or

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2 anyone in the chain of command at the crime  
3 lab what you're interpretation was?

4 A No. Along with us at the scene  
5 is a homicide detective and the ID members  
6 are all present while the laboratory is  
7 there.

8 Q So it was your custom --

9 A The homicide detective, if  
10 there are any notes, he would be taking  
11 those notes down.

12 Q But as far as -- So in the  
13 ordinary course of practice you would arrive  
14 at a homicide scene, you would document the  
15 blood spatter, and then you would  
16 communicate orally to the homicide detective  
17 what your reconstruction was, your  
18 interpretation of the scene based on the  
19 blood spatter?

20 MR. MITCHELL: I object to the  
21 form. You can answer.

22 Q Is that the way it would work?

23 A No, because not at every scene  
24 we would do a blood spatter analysis.

25 Q How would you decide whether or

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1 not to do a blood spatter analysis?

2 A In cases where there is no  
3 known defendant or nobody about that --  
4 Actually there was no rules. There are no  
5 rules. We had no rules at that time.

6 Q At that time. But now, in this  
7 case, when, for the first time, did you tell  
8 anyone, to the best of your recollection,  
9 what your interpretation or reconstruction  
10 was of blood spatter in the office where  
11 Seymour Tankleff had been found?

12 A While we were putting the desk  
13 and the chair and aligning it the lab  
14 personnel, the Homicide and the ID people  
15 were all present and by looking at the  
16 ceiling it was quite obvious that you could  
17 determine that the spatter originated from  
18 the desk in a northerly direction and then  
19 from an easterly direction about two times  
20 because it was angular.

21 Q But you testified at the  
22 criminal trial that somebody was behind  
23 Seymour Tankleff, right, and used a blunt  
24 force instrument to strike a number of blows  
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on his head from behind the chair, correct?

A Consistently.

MR. MITCHELL: I object to the form. Wait a second. I object to the form regarding his testimony at the criminal trial and your characterization of it.

I don't know if you have it, but the proper way to ask is, were you asked this question and did you give this answer.

Q We can go over the specifics of it but let me just see if I -- Your interpretation that you testified to at the criminal trial as to how the blows were inflicted to Seymour Tankleff and where they were inflicted from, that was something that you formulated the second day as you were taking the measurements?

A Whatever day the photographs were taken of the ceiling of the blood castoff that was the day that we formulated that opinion.

Q When you say "we," it would be



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you and Bob Genna?

A Bob Genna and George Reich and myself, yes. And not the homicide detective they would just be standing around.

Q Right. So you, Genna, Reich, and Barnes, and who else, I'm sorry?

A Baumann.

Q Right. Would talk together to do the reconstruction of the blood spatter in the office and then when you reach your conclusion you communicated that to the homicide detectives; is that right?

A I'm not sure if we communicated or he was just there and was able to hear it.

Q You don't remember who that homicide detective was?

A No, I can't remember that day.

Q Do you remember when you were -- After formulating this at the scene as you were taking the photographs and doing the measurements, do you remember the next time, as best you can recall, that you were asked to discuss your reconstruction of what

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happened in the office?

A Probably prepping for trial.

Q To the best of your recollection, did the interpretation that your team made when you were taking the photographs and doing the measurements at the crime scene about the blood spatter reconstruction in the office, was that communicated to Vince Crispino through the chain of command; do you know?

MR. MITCHELL: I object to the form. You can answer.

A I doubt it.

Q So to the best of your recollection this was something that was said to the homicide detectives at the scene and then later prior to the trial you met with the district attorney to explain your interpretations; is that what happened?

MR. MITCHELL: I object to the form. You can answer.

A Yes.

Q You knew that this was a pretty big case from the time you arrived at the

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crime scene, right?

A All homicides are big cases.

Q I understand, but you knew this was a highly publicized case?

A No, it was not publicized. Nobody knew about it.

Q Did you ever examine the photographs and the measurements and the serological results in the master bedroom to formulate a blood spatter interpretation of the homicide of Arlene Tankleff?

A No.

Q Why not?

MR. MITCHELL: I object to the form. You can answer.

A Because it was apparent that there was a struggle. There was no castoff except for one little microdot on the east wall of the bedroom on the opposite side of the bed, and with all the struggling that went on no attempt was made to -- it was obvious that there was a tremendous struggle on the bed and off to the floor and around the north side of the bed so no attempt was

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made to reconstruct that.

Q Are you telling us that at no time in the two days that you were processing this crime scene that a homicide detective did not say to you, in substance, here are the details of what Mr. Tankleff confessed to and let's see if the blood spatter pattern at the scene is consistent or inconsistent with his confession?

MR. MITCHELL: I object to the form. You can answer.

A No.

Q Well, wouldn't you agree that one of the functions of a blood spatter expert or crime scene reconstruction person is to test a hypothesis about how the crime occurred against the objective physical evidence to see if the objective physical evidence is consistent or inconsistent?

MR. TIPALDO: Objection to form.

A No request was ever made. You mean after the scene using the photographs?

Q I asked you -- My question

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2 is --

3 A At the scene?

4 Q -- isn't it the function --  
5 Don't you ordinarily, as a blood spatter  
6 expert, right, take a look at the evidence  
7 of the crime scene, the photographs, the  
8 measurements when you get them all in, any  
9 results you get from the crime lab, and sit  
10 down and take a look at all of that evidence  
11 and see whether a hypothesis that is being  
12 made by, let's say, police, the homicide  
13 detectives, is consistent or inconsistent  
14 with the objective physical evidence? Isn't  
15 that what a blood spatter expert does?

16 A We had no hypothesis. It was  
17 an obvious struggle.

18 Q I'm not asking in this case.  
19 In general, isn't that what you do as a  
20 blood spatter expert?

21 MR. MITCHELL: I object to  
22 form. You can answer.

23 MR. TIPALDO: I join.

24 A If requested.

25 Q So nobody ever requested that

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1  
2 you do a blood spatter analysis of what went  
3 on in the master bedroom, correct?

4 A That's correct.

5 Q Nobody ever requested from the  
6 homicide detectives that you take a look at  
7 the confession made by Mr. Tankleff and see  
8 whether it can be confirmed or not confirmed  
9 by the objective physical evidence? Nobody  
10 ever asked you to do that?

11 A No.

12 Q No district attorney ever  
13 discussed that with you?

14 A No.

15 MR. MITCHELL: I object to the  
16 form. You can answer.

17 Q Is that right?

18 A That's right, no.

19 Q Okay. Now, I think you said a  
20 minute ago -- Why don't we turn now to the  
21 pictures of the master bedroom for a minute,  
22 okay.

23 A (Complying.)

24 Q And that, I think, we've marked  
25 as Exhibit 3. Let me call your attention

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to -- You've looked through these, have you not, just a few minutes ago?

A Yes.

Q Now, do you remember going through these pictures, by the way, in 2008 with the representatives from the State Investigation Commission?

A No.

Q Now, let's just turn to photograph number 14. Do you recognize that to be the side of the bed?

A Yes.

Q All right.

A Master bedroom.

Q In the master bedroom. Do you see on the pillow here or anywhere in this photograph medium velocity blood spatter?

MR. MITCHELL: I object to the form. You can answer.

A Yes, I do.

Q Where do you see that?

A Some on the pillow and some on the side of the bed.

Q Why don't you just take your

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pen and circle it or you can use this Sharpie.

A (Complying.) I missed some there.

Q Anyplace you see it.

A Okay. (Complying.)

Q Now, that would be medium velocity blood spatter consistent with a --

A Medium and low.

Q Medium and low. Why don't you just indicate what you think is the medium. I think you first circled --

A I can't because there is no ruler on this photograph.

Q Okay. So that's point number one that there is no ruler in this photograph, correct?

A That's right.

Q These photographs are not taken at a 90-degree angle, correct?

A That's correct.

Q So there is a certain limitation there in your ability to do a blood spatter analysis, correct?



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A Yes.

Q However, just from looking at these photographs you feel comfortable in saying that you do see some medium velocity blood spatter on the pillow?

A Well, if the picture is taken one-to-one, yes.

Q Why don't you just indicate where -- The first circle you made that is where you see medium velocity blood spatter?

A I hesitate to do that. I don't know the sizes. I mean, in this area here they are quite small.

Q Let's take that area there. Call that area A.

MR. MITCHELL: Put a letter A there.

Q Area A --

A And B.

Q In area A you said that you saw some --

A Small and there was a couple of larger droplets.

Q Okay. Now, would what you see

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in area A be consistent with a blood force  
instrument being used to hit a blood source?

MR. MITCHELL: I object to the  
form. You can answer.

A It's difficult. How much blood  
are we dealing with here, the blood source?  
You have to tell me. We're talking about  
several little dots here. I have to know  
how much blood is on the person, the size of  
the object striking her, and how fast the  
object was.

Q Just looking at these medium  
velocity blood spatter on the pillow in  
photograph 14, okay, area A at this crime  
scene indicate to you just immediately  
looking at it that some blunt force object  
was used to strike the head of Arlene  
Tankleff while she was in that bed?

MR. MITCHELL: I object to the  
form. You can answer.

A Based on this picture I would  
say no.

Q All right. Based on any of the  
pictures, do you see --

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A I don't believe any of these are indicative of castoff from a blunt object.

Q Well, when you say castoff from a blunt object, would they be consistent with the object hitting the head of Arlene Tankleff and blood spatter then resulting in hitting the pillow in area A?

MR. MITCHELL: I object to the form. You can answer.

A These stains that we circled, A and B, are possible or could originate from the source of a blood source that's being struck, yes.

Q That's my question.

A Right. Not castoff but projected blood.

Q Okay. So to use your terminology then, just entering the crime scene and taking a look at that pillow as it is in Exhibit 14, you, as a blood spatter expert, immediately could recognize that this scene was consistent with a blunt instrument being used to strike the head of

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Arlene Tankleff while she was in the bed  
thereby causing projected blood in area A,  
blood spatter in area A?

MR. MITCHELL: I object to the  
form of the question.

A No, I'm not going to answer  
that question. I can't see enough here.  
Plus the fact that this stain looks like  
dripping. This looks like --

Q You're pointing to a --

A Larger drops.

Q Larger drops in area A, but I'm  
directing your attention to the smaller  
droplets that you saw in area A on the  
pillow that you identified as medium  
velocity blood spatter.

A Okay. Repeat your question  
again.

Q My question is, wouldn't you  
upon seeing those smaller spatter patterns  
in area A on that pillow, as an experienced  
blood spatter expert in 1988, just looking  
at it wouldn't that be consistent with  
Arlene Tankleff having been struck on the

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head and projected blood creating that kind of spatter on a pillow?

MR. MITCHELL: I object to the form.

MR. TIPALDO: I join.

MR. SCHECK: You have to answer.

A It is consistent with blood originating from a source and being spattered. It could be consistent with that.

Q From everything you see in all the pictures from the master bedroom and your recollection of the scene, that blood source would be Arlene Tankleff's head?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: Objection.

A I don't know.

MR. SCHECK: Off the record.

THE VIDEOGRAPHER: End of Disk 2. We're off record at 12:57 p.m.

(At this time, a brief recess was taken.)

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THE VIDEOGRAPHER: This is the beginning of Disk 3. We're back on the record at 1:06 p.m. You may proceed.

Q Just to be clear, do you have any recollection at any time subsequent to while you were at the crime scene or subsequent to it, of Detective McCready, Detective Doyle, Detective Fini or anybody from Homicide discussing with you the blood spatter patterns in the master bedroom?

A No.

Q And you have no recollection of ever being asked by anyone in the crime lab to review and try to interpret the blood spatter patterns in the master bedroom?

A No.

Q Did that strike you as odd?

MR. MITCHELL: Objection to form. You can answer.

A No.

Q Is it your testimony that no one in the district attorney's office, in preparation for this trial or at any time

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prior to the trial, ever ask you to review the blood spatter patterns in the master bedroom and give any kind of interpretation of how the crime may have been committed?

MR. MITCHELL: Objection to form.

A No.

Q It's your testimony, just to be clear, that in the two days that you processed the crime scene or thereafter no one from Homicide ever reviewed with you Mr. Tankleff's confession to see whether or not it was consistent with the blood spatter patterns in the master bedroom?

MR. MITCHELL: I object to form. You can answer.

A No.

Q But you do recall that at some point in time when I was reading from Detective Doyle's memo book starting at Page 2713, the confession of Mr. Tankleff, you do remember that at some point you were asked to go back and examine and retrieve certain items of evidence?

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A Yes.

Q All right. Tell me as best you recall how that happened and what you were told?

MR. MITCHELL: I object to form. You can answer.

A What happened?

Q How you came to go back and review certain items of evidence that --

A We were told to pay particular attention to certain items; is that what you're asking?

Q When did that happen and what were you told?

A I believe when Detective Pfalzgraf -- I don't remember what day now. Let me think. It might have been on the Friday. I'm sorry, not the Friday. Thursday, the next day, I can't remember which day. All I remember is being advised late in the evening somewhere after 8 o'clock, 8:30 that certain items they would like us to observe, photograph and collect.



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Q And you were not told why?

A No.

Q You were not told that these were items that they wanted to look at because they were mentioned in a confession they had taken from Mr. Tankleff?

MR. MITCHELL: I object to form. You can answer.

A I don't remember if I was told or not.

Q You might have been told that, right?

A Yeah, I might have been.

Q Is there any reason why you would not have been told in terms of your customs and procedures that Mr. Tankleff had given a confession the morning that you had arrived at the crime scene and that you should go back and look at certain items of evidence to see whether or not they corroborate or did not corroborate to his confession?

MR. MITCHELL: I object to form. You can answer.

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A No.

Q Doesn't that make sense to you in terms of investigative techniques that if you got a confession from a suspect about how a crime had been committed you had not even finished processing the crime scene that you would want to go back and look at the crime scene to see if the confession corroborated or didn't corroborate the confession?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: I join.

A I was never advised of the confession and what he stated. All we were advised of was items and that's what we did.

Q Doesn't it make, in terms of normal investigative methods at that time --

A You mean to substantiate the confession?

Q Yes.

A Yes, it does make sense.

Q Have you ever heard of something at that time called the read

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technique?

MR. MITCHELL: I object to the

form. You can answer.

A No.

Q In all your courses you never  
heard of that technique?

A No.

Q By the time you were doing this  
crime scene in 1988, you had read and heard  
about a series in Newsday called the  
Confession Takers?

MR. MITCHELL: I object to the

form. You can answer.

A I have no idea, no.

Q You don't remember that there  
was a series of articles in Newsday about  
the Suffolk County homicide detectives  
taking confessions that were considered  
improper by the courts?

A I do remember that. I don't  
remember any of the articles in Newsday.

Q Nobody ever discussed with you  
any of the problems that Suffolk County  
homicide detectives were having prior to

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your arrival at the crime scene on  
September 7, 1988 about taking confessions?

MR. MITCHELL: I object to  
form. You can answer.

MR. TIPALDO: Objection.

Q Have you ever heard that in  
particular Detective McCready --

A No.

Q -- had been accused of  
misconduct in a case involving a Defendant  
named Diaz?

MR. TIPALDO: Objection.

MR. MITCHELL: I object to the  
form. You can answer.

A Yes, I did hear that through  
the grapevine that he was in trouble in  
reference to that case.

Q And do you recall that that  
case involved a confession about a knife  
that the Defendant said that he had thrown  
away in the woods and wiped the blood off  
and then sometime later a bloody knife was  
found at the crime scene?

MR. MITCHELL: I object to the

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form. You can answer.

A I heard a little bit about that, yes, through the grapevine.

Q Did that trouble you?

MR. MITCHELL: I object to the form. You can answer.

A Did it trouble me? Not really. I know detectives and police officers are accused of a lot of things.

Q But as far as you were concerned, you never had any problems with McCready and you thought he was a straight up honest cop?

A Yeah, yes, sir.

Q Prior to 1988, and at the time of these articles appearing about the Confession Takers, were there problems in funding of the crime lab?

MR. MITCHELL: I object to form. You can answer.

A It's beyond my scope. I have no idea about the funding of the crime lab.

Q But you, as somebody who worked at the crime lab, didn't you have complaints

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2 or problems that you were not getting  
3 adequate funding to document crime scenes?

4 MR. MITCHELL: Objection to  
5 form.

6 MR. TIPALDO: Objection.

7 A No.

8 Q Any problems in terms of  
9 getting adequate training to process crime  
10 scenes?

11 MR. MITCHELL: I object to  
12 form. You can answer.

13 MR. TIPALDO: I join.

14 A No.

15 Q Now, okay, why don't we review  
16 together Plaintiff's Exhibit 6, which is the  
17 statement that was taken. It's a typed-up  
18 version of a confession by Mr. Tankleff,  
19 Martin Tankleff, and you see the bottom of  
20 this is a police report by Detectives  
21 McCready and supervised by Detective Doyle;  
22 you see that?

23 A Yes, I do.

24 Q Okay. Are you familiar with  
25 this kind of report?

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A No.

Q What is it? What kind of report is it?

A It says supplemental report.

Q Is this a report that is -- It's not filled out contemporaneously; is it?

MR. MITCHELL: I object to the form. You can answer.

Q To the best of your knowledge?

A No, I really don't know what forms they are required to fill out.

Q Why don't you turn in Exhibit 6 to Page 7944, okay. SCDA 007944. I guess it's at the top. It's 11 of 14 pages.

A (Complying.)

Q Are you with me?

A Yes, 7944.

Q All right. And you see at the very top of the page in the second paragraph it says, "Marty needed psychiatric help. He knew what happened, but he felt like it was another person who was inside of him who did it." You see that?

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2 A Yes.

3 MR. MITCHELL: I am just  
4 objecting to the form of your  
5 question as the document speaks for  
6 itself. I ask that you confirm  
7 whether he has ever seen this  
8 document before.

9 Q Have you ever seen this  
10 document before?

11 A No.

12 Q Thank you.

13 Now let's go to the bottom of  
14 the page. It says, "We then asked him what  
15 time he did this. He said he set his alarm  
16 clock for 5:35." You see that?

17 A Yes, I do.

18 Q Then it says it went off, he  
19 woke up. "I asked him what he was wearing,  
20 he said he was naked because he did not want  
21 to leave any blood on his clothing. I asked  
22 him who he killed first. He said he killed  
23 his mom first. I asked him where his father  
24 was, he said he saw that his father was in  
25 his office sleeping in his chair. Initially



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1 he was surprised that he was not in bed with  
2 his mother and that the lights were on. I  
3 asked him what he did to his mother. He  
4 said he hit his mother with a dumbbell then  
5 he cut her throat. I asked him how his  
6 mother was laying in bed, he said she was in  
7 bed on her back. He was asked how many  
8 times he stabbed her, he said he did not  
9 know how many times he stabbed her, he  
10 volunteered that he got to her quickly. I  
11 asked him how many times he hit her, he said  
12 he hit her at least four to five times on  
13 the head. He was not sure. He kept on  
14 trying to hit her. She fought with him. He  
15 said she was in pain calling for help  
16 saying, "Why" and "help me." The "why" and  
17 the "help me" are in quotes. He said he was  
18 afraid his father would wake up and that  
19 after she fell on the floor he ran and got a  
20 knife from the kitchen and cut her throat.  
21 I asked him where the knife was, he said the  
22 knife was on the counter next to the  
23 watermelon. I asked him if she was dead  
24 when he left the room, he said no , she was  
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moving a little bit when he ran out of the  
bedroom to kill his father." Okay?

A Yes.

MR. MITCHELL: Is that a  
question? Are you asking him a  
question?

Q Did you follow that with me as  
I've read it from Exhibit 6?

MR. MITCHELL: I'm going to  
object to the form. Are you asking  
if that refreshes his recollection  
for anything because to the extent  
that it doesn't then he has never  
seen this document.

If you are formulating a  
question from the document, it's  
improper except to ask him if it  
refreshes his recollection. That's  
my objection.

If you're trying to lay out the  
theory of your case, that's  
improper. I don't mind you asking  
him questions about what he did as a  
fact witness, but he has never seen

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the document and so if you're  
formulation a question if it  
refreshes his recollection, I don't  
have an objection.

Q Let me first ask, have you seen  
the document?

MR. MITCHELL: You asked that  
already. It's asked and answered.

A No.

Q I think what we've established,  
Brian, let me just make sure. You're  
telling us that no one from Homicide or the  
prosecutor's office had ever reviewed with  
you Mr. Tankleff's confession and asked  
whether or not it was consistent with the  
crime scene evidence and the blood spatter  
in the bedroom?

MR. TIPALDO: Objection. If I  
may be heard, and this is not my  
witness, obviously, and I can't  
direct him as to what to do, but I  
have an objection with respect to  
this whole line of inquiry based  
upon the witness's testimony that,

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2 number one, he has not seen this  
3 document; number two, he's not  
4 involved in the compilation or the  
5 generation of this document. For  
6 you to ask him questions with regard  
7 to this document is completely out  
8 of line.

9 MR. SCHECK: Let me make this  
10 suggestion because I'm going to lay  
11 out why I'm allowed to do this.  
12 I'll put it on the record and you  
13 can object. Why don't we ask the  
14 witness to leave the room for a  
15 second.

16 MR. MITCHELL: Sure. And  
17 honestly, just to move things along,  
18 I appreciate it. I'm not directing  
19 him not to answer the question. I  
20 made my objection. I know you think  
21 there is a proper reason to ask it,  
22 that's all. I appreciate that. I'm  
23 not directing him not to answer.

24 I guess to save time that if  
25 you were going to ask him something

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2 other than to refresh his  
3 recollection, I would object. Let's  
4 move along.

5 MR. SCHECK: Just to be clear  
6 so you understand, I think I laid  
7 the foundation that blood spatter  
8 experts are asked to confirm or  
9 disconfirm based on objective crime  
10 scene evidence any particular  
11 hypothesis, and he told us that  
12 nobody ever asked him to compare the  
13 confession that Mr. Tankleff gave to  
14 the evidence in the master bedroom.

15 MR. MITCHELL: You're testing  
16 his credibility again.

17 MR. SCHECK: No.

18 MR. MITCHELL: That's what I  
19 think you're doing because then he's  
20 asked and answered your question.

21 MR. SCHECK: Just so you know,  
22 I think it's a perfectly proper line  
23 of inquiry for me to ask him about  
24 this confession and how this relates  
25 to what he observed at the crime

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scene.

MR. MITCHELL: You can do that, but you don't have to recite the entire document as part of your question. I don't get that.

MR. SCHECK: I choose to do it that way.

MR. MITCHELL: I appreciate that but it's going to take a long time.

Q I just read you that paragraph in Exhibit 6 of what was recorded, as you can see, a confession from Mr. Tankleff. Do you have that in mind?

A Yes.

Q Now I'd like to review with you in terms of the blood spatter evidence and the evidence recovered from the crime scene his confession, okay; is that all right?

A Sure.

Q And that is the kind of thing if asked you would have done at the request of homicide detectives when you were processing the scene; true?

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A I don't know. What time was this statement given?

Q I think I reviewed with you before the notes of Detective Doyle which was Exhibit 2. You recall that I read you from Exhibit 2, the memo book of Detective Doyle, starting at page SCDA 2713 per McCready, 12:28, right?

A Yes.

Q And then I read to you the two pages that start "Martin Tankleff confessed." You recall that?

A Yes, I do now.

Q Right. And does any of this refresh your recollection that you were told that afternoon of September 7th that there was a confession and some of the details of it?

A No.

Q By Doyle or anybody else?

A I didn't even know that Mrs. Tankleff's head was a bludgeoning. They had not even gotten there yet.

Q So just answer my question.

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A I did.

Q No. My question is that to the best of your recollection, even today, no one has ever asked you to look at the details of the confession and compare it to the to crime scene evidence, right?

MR. TIPALDO: Objection. Asked and answered repeatedly.

MR. MITCHELL: You can answer the question.

A Yes.

Q Now, you see that Mr. Tankleff said he set his alarm for 5:35; you see that?

A What page are we on?

Q On Page 7944 of Exhibit 6.

A 7944. Right.

Q Okay. So you see --

A He set his alarm.

Q For 5:35, right?

A Yes.

Q And we know that the 911 operator was called at 6:11 a.m.

MR. MITCHELL: I object to the



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2 form. Are you testifying as a  
3 witness? You're asking we know.  
4 Ask him if he knows what time the  
5 911 call was made.

6 Q Do you know what time the 911  
7 call was made?

8 A No.

9 Q I'm going to ask you to keep in  
10 mind that the 911 call, and we can double  
11 check this if you want, Brian, was 6:11.

12 MR. MITCHELL: Is that a fact  
13 that we could stipulate to? I'm not  
14 trying to be a pain in the behind  
15 but if you ask questions like that  
16 I'm going to object to them.

17 MR. SCHECK: Brian, I'm going  
18 to make a good record and satisfy  
19 you on all the facts.

20 MR. MITCHELL: Okay.

21 Q So would it be fair to say that  
22 in terms of all of this, we're talking about  
23 a time frame about what he did that starts  
24 at 5:35, according to the confession, right,  
25 and has to end at least at the latest at

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6:11 because that's a hard time when 911 was called; fair enough?

MR. MITCHELL: I object to the form. You can answer. You're asking him the time between 5:35 and 6:11? That's what 26, 36 minutes.

Q Ordinarily, when you're doing crime scene reconstruction, if you have any hard times to work with, that's important in terms of trying to analyze the evidence at the scene?

MR. MITCHELL: I object to form. You can answer.

A I guess. I don't know.

Q That's not something you've ever done? You look at how long blood dries, when the spatter patterns were done. Times can be useful and relevent, correct?

A Yes, but that would be more in the research area.

Q Well, let's just go through this. And he says here he was naked because he didn't want to leave any blood on his clothes; you see that right?

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1  
2 A Yes.

3 MR. MITCHELL: I object to the  
4 form.

5 Q In your processing of the crime  
6 scene you found no bloody clothes?

7 A I don't know that.

8 Q To the best of your knowledge,  
9 you found no bloody clothes? The people  
10 that you were working with found no bloody  
11 clothes, correct?

12 A Clothing was gathered at the  
13 scene. I did not analyze or am I  
14 serologist. It was turned over to the  
15 serology section. I have no idea if there  
16 were any blood on.

17 Q You're talking about clothes  
18 that were found at the scene that belonged  
19 to Seymour Tankleff.

20 A I don't know what clothes you  
21 were talking about.

22 Q Other than the clothes that  
23 were found in the office that were worn by  
24 Seymour Tankleff, do you recall that there  
25 were any bloody clothes found at a crime

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scene that would be consistent with somebody having worn them during the course of the commission of these two homicides?

MR. MITCHELL: I object to the form. You can answer.

A No.

Q All right. Would it be fair to say just from looking at the crime scene where Arlene Tankleff was murdered that whoever bludgeoned her or stabbed her, or if there was more than one person who bludgeoned her or stabbed her, there is a high likelihood that their clothing would be covered with blood?

MR. MITCHELL: I object to form. You can answer.

A I would say yes.

Q All right. That was a pretty bloody crime scene in that master bedroom?

A Yes.

Q With the number of blows inflicted to her head and the slit in her back and in her neck, that would create a lot of blood that would splash on

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assailants?

MR. MITCHELL: I object to the  
form. You can answer.

A The cutting possibly not, but  
the bludgeoning, yes.

Q Now, you see in this confession  
he said he killed his mom first, correct?  
Do you see that?

A Yes. You read this.

Q Next page. And you see in this  
confession that he said that he hit his  
mother with a dumbbell, correct?

A Yes.

Q And then, after he struck her  
with the dumbbell he went back and got the  
watermelon knife from the kitchen and that's  
when he came back and used the knife to  
inflict injury on her, correct?

A Wait a minute. I don't see all  
that here.

MR. TIPALDO: Objection.

Q Take a look at this.

A I don't see anything about  
watermelon knife. Where do you see that?

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Q Look at the last line on this paragraph on Page 12. "I asked him where the knife was, he said the knife was on the counter next to the watermelon knife."

A Okay. Go ahead.

Q Right?

A Give me your question.

Q Right. So based on what I just read you, right, according to this confession, he woke up at 5:35 he first went to attack his mother naked, right? He had a dumbbell with him, he used the dumbbell to strike her when she was lying in the bed on her back, right, and then he went back into the kitchen to get the knife next to the watermelon and then came back and used the knife on her at that time. That's what he says, correct?

A Sounds good.

Q That's what this says, correct?

A Yes, sounds good.

MR. MITCHELL: I object to form.

Q Now, let's just be clear about

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what everything is.

A Okay.

Q We have this model, correct?  
Exhibit 1, right?

A Yes.

Q And now, there was a dumbbell  
that you found in Mr. Tankleff's bedroom,  
correct?

A Yes.

Q That was an item that you were  
asked specifically to check, correct?

A Yes, a set of dumbbells.

Q Set of dumbbells and you were  
asked to check them because you knew that  
that was potentially a blunt instrument that  
was used on both Arlene Tankleff and Seymour  
Tankleff, correct?

A Yes.

MR. MITCHELL: I object to  
form. You can answer.

Q Where did you find those  
dumbbells?

A In the southwest bedroom.

Q Mr. Martin Tankleff's bedroom?

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A That's right. The blue square on the southeast corner, southwest corner.

Q Let me mark this as Plaintiff's Exhibit 8. It's two photographs.

(Whereupon, Plaintiff's Exhibit 8 was marked for identification.)

Q And these were photographs that -- These were the dumbbells that you saw at the crime scene?

A Yes, they are.

Q On September 7th and 8th?

A 7th.

Q 7th?

A Oh, gosh. You know, I'm going to say it was the evening of the 7th, yes.

Q On the evening of the 7th, all right. And you went and inspected those dumbbells and just visually looking at them you did not see any blood, correct?

A That is correct.

Q And are you aware that those dumbbells were subsequently taken back to the crime lab, they were taken apart, and they were examined with testing for the



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presence of blood?

MR. MITCHELL: I object to the  
form. You can answer.

Q You understand that?

A I know they were returned to  
the crime laboratory and they were submitted  
to the serology section.

Q You're familiar with what  
serology does, correct?

A Yes.

Q And they would take apart these  
dumbbells and they would examine the bar and  
the weights themselves for any presence of  
blood, correct?

MR. MITCHELL: I object to  
form. You can answer.

A I can't answer. I don't know  
what someone else would do.

Q Well, you're familiar with  
presumptive tests for blood; aren't you?

A Yes, but I don't know how far  
an individual would go. We had cases where  
someone forgot to take the grips off a  
weapon that had blood on it and the weapon

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went to property bureau.

I don't know how far someone would go to examine these items that were submitted to the section. I did not do it.

Q In the proper course of examination of a crime scene, you would take the dumbbells and you would do a presumptive test on all parts of it, the weight itself, the bar, for the presence of blood, correct?

MR. MITCHELL: Objection. You can answer.

MR. TIPALDO: Objection.

Q That's how it works when you do blood spatter analysis?

MR. TIPALDO: Objection.

MR. MITCHELL: I object to the form. You can answer.

A Yes. My answer is it depends on the individual that's performing the analysis.

Q You're saying that sometimes people screw up and they don't do the analysis correctly. Is that what you're telling us?

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MR. MITCHELL: Objection.

A No, I'm saying you don't know how far an individual would go to maybe unscrew the bolt and check under the cuff of the barbell, that's what I'm saying. Or maybe they might not take off this collar, just check the outer surface and not check inside the collar for blood.

I can't speak of what another serologist or another person can do or would do.

Q In the point of view of somebody involved in accident reconstruction, would the proper course of conduct be to take apart every part of that barbell and swab all of it and do presumptive testing for the purpose of blood?

A Yes.

Q As far as you know, during the course of this case, that was done?

MR. MITCHELL: I object to the form. You can answer.

A The only reason that I think it

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was done is because no blood was found so  
therefore, I assumed that it was done.

Q Okay.

MR. MITCHELL: I appreciate  
your answer. It's just for the  
record, we ask you not to assume. I  
understand your answer that's all.  
You should not guess or assume.

MR. SCHECK: I can ask him to  
assume. He's an expert.

MR. MITCHELL: He has not been  
called as an expert for this  
deposition. I don't believe we  
received Rule 26 for this and I'm  
going to object if you're going to  
start asking questions under Rule  
26.

MR. SCHECK: Let me do this.  
Maybe this will help you, Brian.

Q In the course of your work as a  
blood spatter expert, right, in the normal  
course of business, you would retrieve items  
from a crime scene and you would ask  
serology, which in this instance, I guess,

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Mr. Baumann was running; is that correct?

A Yes.

Q You would rely on his expertise to conduct a thorough set of presumptive tests for the presence of blood?

A Yes.

Q Are you familiar -- Were you trained on what those kinds of tests are?

A Somewhat through prior studies. I'm not at all do I deal with blood.

Q But even --

A Testing, I'm sorry.

Q But even at the crime scene itself sometimes you would have somebody there in your presence, I take it, who would do presumptive testing for the purpose of presence of blood?

A Yes.

Q So this is a method that you're familiar with?

A Yes.

Q And you know that the presumptive tests for blood are extremely sensitive, correct?

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A Correct.

Q And by sensitive we mean it has a greater ability to detect the presence of blood if it is in deed there?

A True.

Q Now, just looking at the crime scene in the master bedroom, right, and Mr. Tankleff's statement that he used these barbells to hit his mother, right, in the master bedroom, a number of times about the head when she was in the bed, you remember going over that, correct?

A Yes.

Q These barbells, as you saw them at the time, are not consistent based on your expertise as a blood spatter expert as having been the instruments that could have been used to inflict those injuries on Arlene Tankleff --

MR. MITCHELL: I object to the form.

Q -- are they?

MR. MITCHELL: You can answer.

A I can't rule that out. I don't

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know what the wounds look like.

Q You don't?

A No.

Q You saw some of the -- You saw her body, you saw the photographs --

MR. TIPALDO: Objection.

Q -- in Exhibit 3 of her on the ground, correct, and her body at the scene?

A Show me where you see that it's consistent with the barbell.

Q No, no, I'm just saying take a look at the photograph of her head, right, covered in blood and the bloody scene on the bed.

A Wait a minute.

MR. MITCHELL: Let him ask his question.

Q If, as recited in this confession, Mr. Tankleff had taken these barbells and hit his mother a number of times while she was lying on her back in the bed about the head --

A Right.

Q -- right, would you not have

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2 expected as a blood spatter expert to see  
3 the barbells covered in blood?

4 MR. MITCHELL: I object to  
5 form. You can answer.

6 A To that question I would say  
7 yes.

8 Q Let's take a look at the  
9 autopsy photos.

10 MR. SCHECK: Let's mark as  
11 Exhibit 9 a series of autopsy  
12 photos.

13 (Whereupon, Plaintiff's Exhibit  
14 9 was marked for identification.)

15 Q Exhibit 9, seven pages. Take a  
16 look at those and you see from these autopsy  
17 photos that there are a series of wounds to  
18 Arlene Tankleff's skull, right?

19 A Yes.

20 Q On the left side of her head  
21 including injury to her ear?

22 A Yes.

23 Q Now, by the way, do you have  
24 the expertise from looking at that -- You've  
25 attended autopsies before in homicide cases



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as part of your analysis of blood spatter and reconstruction; have you not?

A I've attended all types, many autopsies.

Q Right, and you attend them to examine the body as essentially a piece of the crime scene in order to reach your conclusions with respect to blood spatter analysis?

A Not really.

Q You never do that?

A No.

Q You attended the autopsy in this case of Seymour Tankleff; did you?

A No, sir.

Q Are you sure?

MR. MITCHELL: I object to the form. You can answer again.

A To the best of my knowledge, I did not.

Q We'll get back to that. Now, just looking at the head, would you not agree with me that there are a series of impressions from a blunt instrument on the

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left side of the head and the ear of Arlene Tankleff?

MR. MITCHELL: I object to the form. You can answer.

A Yes.

Q All right. Now, in terms of can you tell or would you know whether these barbells are consistent or inconsistent with having been the instruments that would have caused those wounds?

MR. MITCHELL: I object to form. You can answer.

A No, I can't answer that question.

Q But if Marty Tankleff's confession, as printed here in Exhibit 6, is reliable, he is saying that he used the barbells that are depicted in Plaintiff's Exhibit 8 and you saw on the crime scene to inflict those wounds to the head of his mother.

MR. MITCHELL: I object to the form. You can answer.

A He does say that, yes.

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1  
2 Q Now, based on your experience  
3 as a blood spatter expert, if he had, in  
4 fact, used those barbells that's in  
5 Plaintiff's Exhibit 8, right, and inflicted  
6 the injuries to his mother while she was  
7 lying on her back in the bed, I think we've  
8 already established you would expect to see  
9 blood on the barbell itself and/or the bar,  
10 correct?

11 MR. MITCHELL: Objection. It's  
12 been asked and answered.

13 MR. TIPALDO: Note my objection  
14 to form.

15 A Yes.

16 Q And if Mr. Tankleff put the  
17 barbell down on the bed or on the carpet in  
18 the master bedroom, would not, based on your  
19 expertise as a blood spatter expert, that  
20 cause a transfer stain?

21 MR. MITCHELL: I object to  
22 form. You can answer.

23 MR. TIPALDO: I join.

24 A I can't answer it because I  
25 don't know if there was any blood

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transferred from the head to the barbell.

Q Well --

A I don't know what end of the barbell he used. Did he separate them? He doesn't say. Did he use with the weights on? Does he just use the center portion? Does he take the collar off, take the nut out? There's two collars laying here. I don't know what he did.

Q Any part of the barbell, whether the weight or the barbell itself was used to inflict the injuries that you have seen now in Plaintiff's Exhibit 9 from the autopsy photos and you saw at the crime scene, whatever part of the barbell was used, I think you've agreed there would be blood on it, correct?

A Yes, there would be some blood.

Q And if the blood on that instrument then was then put down somewhere in the master bedroom, whether it was on the bed or the carpet, right, based on your expertise as a blood spatter expert, would you not expect to see some kind of a

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transfer stain?

MR. MITCHELL: I object to

form. You can answer.

A No.

Q You wouldn't?

A No.

Q Why not?

A Because he could use the edge of the barbell and cause this type of wound with just using the edge. They all appear on the left side. She could be laying this side does he go on the bed so let's just say.

MR. MITCHELL: I appreciate he's asking a question, but I ask that you allow him to finish his answer. I appreciate that he's asking you a question in his answer, but I don't think he was done so just finish your answer, Detective.

A To me, these look like glancing blows and they are from the left side so what I say right now is she was probably laying on her back and the left side was

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exposed. The reason why I say that is by looking at the bed there's chopped hairs all about the top of the bed and nothing on the floor so it indicated to me that the barbell occurred on the bed and right here there was slicing. There was a scuffle down here on the floor where she was sliced.

Q Now, when you say that there were -- You noticed in the pictures in Exhibit 3 that there was a clump of hair on the bed, correct?

A Yes.

Q Let's talk about that. First we see from a long view the clump of hair in photograph 13?

A Right.

Q Correct?

A Yes.

Q And that is a clump of hair that is on the left side of the bed where there is a pooling of blood that you then see goes down to the floor?

A North side of the bed to the floor.

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Q On Exhibit 14, which is the exhibit that you marked up previously with respect to the contents, the medium velocity spatter in area A, you also see that hair, correct?

A Yes.

Q And now let's look at photograph 15 and this would be the close-up shot, correct?

A Yes.

Q And it's clear that you would not agree that somebody was trying to take a close up picture of this pooling on the left side of the bed and the hair, correct?

A Well, actually, that was taking the pooling. They were trying to capture both of these tags. Item 19 and 23 that's a hair in here. They were trying to capture both of those, not the pooling.

Q So they were looking at the hairs, correct?

A Yes.

Q And looking at this hair so that would be this clump of hair would be

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item 19?

A I believe so, yes.

Q And you can see on the top of it, it appears to be a cut edge, correct?

A Yes.

Q Right. And so that cut edge would be consistent with a knife being used on the head, wouldn't it?

MR. MITCHELL: I object to form. You can answer.

A That could be.

Q Well, isn't that far more likely based on your experience than using a blunt instrument like a barbell to cause that kind of clean edge on the hairs, that clump of hairs, that we see in photograph 15 and you've identified as item 19 from the crime scene?

MR. MITCHELL: I object to form. You can answer.

MR. TIPALDO: Objection.

A Repeat the question.

Q Sure. Isn't it more likely that that clump of hair, given the straight



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2 edge on the top, correct, clean edge on the  
3 top, is the result of a knife being used on  
4 Arlene Tankleff's head as opposed to a blunt  
5 instrument such as the barbell?

6 MR. MITCHELL: I object to  
7 form. You can answer.

8 MR. TIPALDO: Objection.

9 A I can't answer that. That  
10 would be a question for the medical  
11 examiner.

12 Q You never analyzed hairs --

13 A No.

14 Q -- in the course of your  
15 analysis of the crime scene?

16 A No, narcotics firearms and  
17 accidents reconstruction.

18 Q All right. You were saying  
19 before and you were pointing to, let's just  
20 be clear, Exhibit 8, and you were talking  
21 about potentially the blood being on the  
22 very top of the barbell; is that what you  
23 said?

24 A No, I said the very top of the  
25 bar could be used; therefore, there would

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not be that much transfer from the head to

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the bar. Therefore, I would not expect to

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have an impression any other place.

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Q Let's just back up a second

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because we used some terms a little quickly

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here.

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The term transfer stain, what

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does that mean?

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A I didn't say stain. I said

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transfer of blood from the bar to the head.

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Q I asked you a different

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question. You were answering a question

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before. Let's define our terms.

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What does the term transfer

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stain mean?

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A A transfer stain would be a

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stain that if you had a bloody instrument

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and you laid it on something the blood from

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the instrument would be transferred to

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another surface.

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Q Let us assume now, based on

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your expertise as a blood spatter expert,

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that the weight of the barbell was actually

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used to inflict injuries to Arlene

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Tankleff's head in the master bedroom. Do

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you have that assumption in mind?

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A Not really.

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Q I'm just asking you to make it.

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Can you do that?

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A You did not tell me that, yes.

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I have it now.

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Q Okay. I'd ask you to further

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assume that the barbell was then placed down

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either on the bed or on the carpet or in

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some other place in the bedroom when,

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according to Mr. Tankleff, he then goes to

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the kitchen to get the watermelon knife and

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then come back and stab his mother. You

16

have that in mind?

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A No, wait. Let's go over it

18

again.

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Q Sure.

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A We have the barbell and the

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weight on the barbell or just the weight?

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Q I'm going to start by asking

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you just about the weight?

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A Okay. Go ahead.

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Q We agree that in this

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confession he describes first hitting his mother with the dumbbell, correct?

A Dumbbell, yes.

Q And then going back into the kitchen, getting the watermelon knife, coming back into the bedroom, and then stabbing her, correct?

A Right.

Q Now, we were talking before and you agreed with me that if the dumbbell had been used as the blunt force instrument to cause injuries to Arlene Tankleff's head that it would be covered in blood whatever part of it was used, correct?

A Yes.

Q Now, I was asking you questions before about transfer stains, okay?

A Yes.

Q And the assumption of those questions is that if, as this confession indicates, he went to the kitchen, right, with the bloody dumbbell, right, got the watermelon knife and then came back to stab his mother, okay, are you with me?

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A Yes, he's carrying the  
dumbbell.

Q Either A, he could be carrying  
the dumbbell, correct?

A Yes.

Q Then wouldn't you expect as he  
was carrying the dumbbell from the master  
bedroom to the kitchen, right, that that  
could cause a blood trail; that blood could  
come off the dumbbell and would be on the  
ground?

MR. MITCHELL: I object to  
form. You can answer.

A Well, here's my --

MR. MITCHELL: Just answer his  
question. Listen to his question  
and answer his question. He asked  
you a specific question, just answer  
the question.

A Okay. The lack of castoff, we  
know she's bludgeoned at this time. The  
lack of castoff in the room indicates that  
the weapon did not have that much blood on  
it. In other words, we know there's several

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strikes here to the head.

Q You're looking at Exhibit A and you see several strikes to the head, correct?

A Yes. And there's no castoff anyplace except that one microdot up on the northeast corner. I'm sorry, east wall. There's a number three microdot.

Q You don't think that there's any medium velocity blood spatter on --

A That could be from impact. You said that yourself, that's impact. In other words, compression blood could cause that blood.

Q On the bed?

A Okay, but how about the castoff? If you're saying the instrument is that bloody, the father's room has it, it's up on the ceiling. Where is it in the mother's room?

Q So you're saying you see no evidence of medium velocity blood spatter that could be consistent with using the dumbbell on her head in the bed as described

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in this confession?

A No, I didn't say that neither. I said we don't know what portion of the dumbbell was used to cause this. It could be the end of the dumbbell, the end of the bar. There's a poke more than a bludgeoning.

Q If the actual end of the dumbbell --

A Now you're pointing to the weight.

Q If the weight of the dumbbell had been used, right --

A No, I don't think the weight can cause this type of an injury that cuts. It would have to be a sharp edge. So let's say they left the collar on it, that's a possibility.

Q Let's just take it one step at time. Based on your expertise, you don't believe that the dumbbell weight could have been used here, correct?

A That's correct.

Q So you think it was the

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dumbbell bar?

A And possibly if the collar was left on possibly.

Q So if the dumbbell bar or the tip had been used to inflict the injuries to Arlene Tankleff's head, right, that would be covered in blood; we agree on that, correct?

MR. MITCHELL: I object to the form. He has not agreed to being covered in blood.

Q It would be bloody?

A It would have some blood on it.

MR. SCHECK: Off the record.

THE VIDEOGRAPHER: Off the record at 1:58 p.m.

(At this time, a brief recess was taken.)

THE VIDEOGRAPHER: This is the beginning of Tape 4. Back on the record at 2:53 p.m. You may proceed.

Q So where we left off Mr. Kosciuk, we were talking about blood on the barbell. Assuming that what Mr. Tankleff



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said in his confession to Detective McCready were true, are you with me?

A Yes.

Q And you were saying that if there were -- You thought it likely that the wounds were made by the end of the barbell that you saw in terms of the autopsy photographs of Arlene Tankleff?

A Yes, Exhibit 9.

Q Let's get back to this content of the transfer stain.

A I didn't say they were, I said they were consistent with.

Q I understand. You said it was more likely that it was the edge of the barbell, assuming that that was actually the instrument used, than it would have been the round dumbbell itself, correct?

A Yes.

Q Okay. Now, just so we're clear, there was no evidence that you saw, and let's go back here to the model for a second, there was no blood that you saw from the master bedroom to the kitchen where the

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watermelon knife was, correct?

At that crime scene you did not see any blood trail or blood drops at all?

A No, I did not.

Q If there were any blood on the tip of the barbell, and if this confession is accurate and reliable, and further, if Mr. Tankleff, after first bludgeoning his mother with the barbell, went to the kitchen to pick up the watermelon knife and then came back as the confession says --

A Carrying the barbell?

Q Yes, we're under the assumption carrying the barbell. There was no evidence of any blood droplets between the master bedroom, the kitchen area and back, right?

A That's correct.

MR. TIPALDO: Objection.

Q In terms of transfer stains, there is nothing that would even reflect the tip of the barbell, assuming that was what was used, and that was covered with blood being placed on the bed and creating a transfer stain, being placed on the carpet

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in the master bedroom, or any other object

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in the master bedroom that you saw that

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would reflect a transfer stain of blood on

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the tip of the barbell contacting some

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surface?

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MR. MITCHELL: I object to the

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form. You can answer.

9

A I never examined all the bed

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clothing. We recovered it and it was

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transported to the serology section and what

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you're saying is they would have been the

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ones if they saw anything like that.

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Q In terms of blood spatter,

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right, the examination of the sheets, right?

16

A Right.

17

Q You saw nothing that looked

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like a transfer stain from the tip of a

19

barbell or from the cylindrical length of a

20

barbell?

21

A I didn't look for that at the

22

scene.

23

Q To your knowledge, nobody

24

identified anything like that?

25

A To the best of my knowledge,

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no.

Q Right. But from the point of view of a blood spatter expert trying to test the hypothesis reflected in this confession if it happened as Mr. Tankleff has reported to have confessed it happened, right, and the bloody barbell, and I'll take your assumption that it would be the tip of the barbell, as far as you know, nobody reported seeing any kind of transfer stain on the bedding, on the carpet or any other object in the master bedroom?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: I join.

A To my knowledge, I did not read all the reports from the laboratory, but no, as far as I'm concerned.

Q Now, as far as the kitchen itself is concerned, if the barbell had been carried to the kitchen and even to stick with your assumption that the end of it was the instrumentality that was used for the bludgeoning and there was blood on it, there

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1 is no evidence that that barbell was put on  
2 the counter while the knife was ceased or  
3 anything like that, no transfer stains of  
4 that nature were seen in the kitchen?  
5

6 MR. MITCHELL: I object to  
7 form. You can answer.

8 MR. TIPALDO: I join.

9 A That's correct, no blood was  
10 found.

11 Q Now, let's talk about following  
12 the confession Mr. Tankleff says that, and  
13 I'm directing your attention again to the  
14 first paragraph on Page 12, he says, "he was  
15 afraid his father would wake up and that  
16 after she fell on the floor he ran and got a  
17 knife from the kitchen and cut her throat."  
18 Do you see that?

19 A Yes.

20 Q You have -- Take a look at  
21 Exhibit 9 in terms of the autopsy photos and  
22 you see pictures 5, 6, and 7 reflect --

23 A Slicing.

24 Q Slicing, you would call that.  
25 That's what you would characterize it as?

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A Slicing.

Q A pretty substantial slicing in her upper back, correct?

A Correct.

Q And a slicing of her --

A Neck.

Q -- neck that extends from below the ear, in this picture at least number 5 into behind her scalp, correct?

A Yes.

Q Now, if from a blood spatter expert point of view if Arlene Tankleff is on the ground, okay, and then naked now, you recall that Mr. Tankleff's confession says he is naked doing all this, correct?

A Yes, he does.

Q So coming back now and inflicting these wounds when she's lying in the ground, right, can you think of how he would be able to get to her back and her neck to inflict these wounds if she is lying on the ground?

MR. MITCHELL: I object to form. You can answer.

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MR. TIPALDO: I join.

A How do we know that that occurred on the ground?

Q Well, I'm only going to -- The confession says he got the knife from the kitchen and cut her throat, correct?

A Right.

Q So there is no knife to inflict either the wounds to the back or the wound to the neck?

A Oh, he's saying he only cut her throat, is that what you're saying, and we have wounds to the back that he does not mention?

Q No, I'm saying, if you look at the confession, first he describes hitting her with the barbell?

A Yes.

Q Then he returns into the kitchen and when he comes back with the knife to inflict the injuries from a knife, right, he says that she had fallen on the floor.

A Right.

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Q Okay.

A She could be next to the bed on the north side with the head facing east and still alive, possibly.

Q He indicates that she was alive. In fact, he said in this confession, no, she was even moving a little bit when he ran out of the bedroom to kill the father. You saw that, right?

A Yeah, you just read it.

Q Okay. Yes, what we're doing is trying to analyze. Given your expertise as a blood spatter expert, I understand nobody ever asked you, homicide detectives or district attorneys, to look at this confession and compare it to the evidence at the crime scene.

A That's right.

Q So I'm trying to go through that exercise with you now based on your expertise. So why don't we take a look at photo 23.

A Well, let's look at.

MR. MITCHELL: I'm sorry.



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A Let's look at 22.

MR. MITCHELL: Wait. Chuck, He  
has not asked you a question.

THE WITNESS: I thought he did.

MR. MITCHELL: I don't know.  
And if he did, I object to the form  
of it.

Q Well, I don't want to, in any  
way -- You've been thinking about this over  
lunch and looking at the pictures?

A No, I'm trying to answer the  
question that you said. He says he comes  
back and she's on the floor.

Q That's correct?

A I kind of agree with that. Her  
head is in an easterly direction because we  
have quite a lot of pooling here and then  
now all of a sudden she's facing in a  
westerly direction so yes, she could still  
be alive and fighting it.

Q So you're now referring to  
photograph 22, correct?

A Right.

Q And you're referring to pooling

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on the floor where her right leg is,  
correct --

A Right.

Q -- in this photograph. And now  
let's turn to 23, okay, and that depicts  
Arlene Tankleff where she was found dead on  
the floor, right?

A Yes.

Q And you say what direction is  
that?

A That would be west.

Q West. All right. Now --

A Head west.

Q Head west. So looking at these  
crime scene photos and assuming that Mr.  
Tankleff's confession is true that she was  
on the floor and then he was inflicting the  
wounds with the knife to her back and her  
throat. Can you give us your interpretation  
in terms of blood patten as to the mechanism  
as to how those injuries would occur?

MR. MITCHELL: I object to  
form. You can answer.

A First of all, I don't see one

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to the throat. Do you see a throat cut?

MR. MITCHELL: Chuck, don't ask him questions. Answer his questions if you can answer.

Q You're pointing now to 23 which is the photograph showing her lying on the ground, correct?

A That's correct.

Q Right. So my question to you is, given this confession, right, and she was lying on the ground after being hit with a barbell on the bed, right, where she started lying on her back that's what this says, correct?

A Right.

Q Now, when he comes back with the knife given that the cuts as we've examined from the autopsy photos are to her back and to her neck, looking at the crime scene, by what mechanism would that occur?

MR. MITCHELL: I object to the form.

MR. TIPALDO: I join.

A Can you define mechanism for

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me?

Q Would it be fair to say that given where her final resting place is, right, she would have to be sitting up or she would have be to picked up in order to have that injury to her back with the knife?

MR. TIPALDO: Objection.

MR. MITCHELL: I object to the form.

A I thought we just decided that it's possible that she could have rolled off the bed and ended up on her chest and therefore, she's now having her back exposed and he comes along and starts fighting her with the knife. I also see a stab wound here on the back.

Q Okay.

A And she's still alive and she ends up trying to turn around and maybe even trying to get out of the room, I don't know.

Q Okay. So from looking at this one scenario you think is consistent with the blood spatter evidence is that she fell off the bed, she was on her stomach?

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A Chest, stomach.

Q Then the injuries with the knife were inflicted to her back and her neck and you indicated also a stab wound to the back, correct?

A Correct.

Q And those are consistent with somebody having a knife and Arlene being on her stomach, correct?

MR. MITCHELL: I object to the form.

Q That's what you're suggesting?

MR. MITCHELL: No, that's what you're suggesting. I don't know that he's answered that. I object to the form.

Q Are you suggesting that?

A It's consistent with that, yes.

Q By the way, given these stab wounds it would also be consistent, would it not, if somebody, right, not talking about Mr. Tankleff now, but if somebody were to have attacked Arlene Tankleff while she was lying on her stomach on the bed, all right,

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initially they could have inflicted the wounds in the same fashion as you're suggesting could have happened with her on the floor, correct?

MR. MITCHELL: I object to the form. You can answer.

A I can't tell where those cuts in the back.

Q You can't tell where but what you were just saying a second ago, if I understood you correctly, consistent with Mr. Tankleff's confession, then a likely scenario is that she would have fallen off the bed, she would have been on her stomach and then attacked while she was on her stomach with the knife wound, correct?

A That's a possibility, sure.

Q And that's because these knife wounds given their configuration are consistent with her having been on her stomach and being attacked from above while she's lying on her stomach?

MR. MITCHELL: I object to form.

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Q Is that correct?

A Yes.

MR. MITCHELL: For the record,  
my objection is to form and that all  
of these questions require the  
witness to speculate.

He's answering about things  
that -- He's answering based on this  
is his testimony today.

MR. SCHECK: Yes.

MR. MITCHELL: I object to the  
entire line of questioning as it's  
entirely speculative. You can keep  
going.

MR. SCHECK: I understand.

Q Now, in following up on your  
statement that in terms of reconstructing  
the crime scene consistent with the  
confession, if Mr. Tankleff came back, as  
you're suggesting, with the knife and  
inflicted these wounds that we see in the  
autopsy photographs while Arlene Tankleff  
was on her stomach having rolled off the  
bed, would you expect that parts of his body

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2 would be covered in blood after having  
3 inflicted these knife wounds?

4 MR. TIPALDO: Objection. This  
5 witness is not suggesting. It's  
6 what the confession states. He is  
7 not suggesting that he came back  
8 with a knife, that's what the  
9 confession states.

10 MR. SCHECK: We understand  
11 that.

12 MR. TIPALDO: No, but.

13 MR. MITCHELL: You have to  
14 clarify it for the record. It's  
15 your question when you --

16 MR. TIPALDO: Objection to  
17 form.

18 MR. MITCHELL: Objection to the  
19 form and, right, I don't want to do  
20 a speaking objection. You can  
21 answer. Listen to his question,  
22 answer his question. Pause because  
23 most likely I will be objecting.

24 Q You understand my question?

25 A No, give it to me again.



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1  
2 Q Sure. We went over together,  
3 right, the crime scene evidence and Mr.  
4 Tankleff's confession insofar as he came  
5 back when she had already "fallen on the  
6 floor," right, and then used the knife to  
7 inflict the wounds that we see on her back  
8 and on her throat, correct?

9 A Yes.

10 Q All right. And as we discussed  
11 that, and I asked you consistent with the  
12 crime scene evidence how could that occur,  
13 right, you said that one way that it could  
14 have occurred is that she rolled off the  
15 bed, was on her stomach, and then he took  
16 the knife and inflicted the wounds to the  
17 neck and back while she was on her stomach,  
18 correct?

19 A I did say that, yes.

20 Q And then, in this scenario she  
21 would have gotten up, struggled, and then  
22 fallen to the ultimate resting place that we  
23 see her on the side of the bed?

24 MR. MITCHELL: Objection to the  
25 form. You can answer.

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MR. TIPALDO: Objection.

A Or crawled or whatever, yes, to where she's found.

Q Given that scenario, based on your expertise in blood spatter, would you not agree that if that's the way it occurred that Mr. Tankleff would be -- blood would have transferred to him from the infliction of these wounds and from being on the ground, you know, over her doing the cuttings?

MR. TIPALDO: Objection.

MR. MITCHELL: Objection to form. You can answer.

A I can answer?

Q Yes.

A Okay. I would suspect that Mr. Tankleff would have blood on him if the bludgeoning took place on top of the bed and he used, let's say, the barbell. I would expect blood to be splattered back onto him.

The knife wound, now, if that type of a beating, I don't know how her blood pressure is, okay, and if she's near

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death then I would not expect not a tremendous amount of blood to bleed out about her. You follow what I'm saying? If you're near death, you won't get the pressure from the blood.

So the beating with the barbell I would, yes, maybe not so much from the cutting that he would get -- He does not even have to be near her, he could stand over her. And how much alive she was, I have no idea.

Q To the extent that he was in contact with her body when he did the stabbing in this scenario, blood is likely?

A He never said he was in contact --

MR. MITCHELL: Let him finish his question.

Q If it's unclear from this confession how this happened, right, but we're just looking at the crime scene evidence and trying to do a reconstruction, right, of blood patter given the statements that he made, right, and would you not agree

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1  
2 in the reconstruction you're suggesting  
3 looking at the crime scene evidence and the  
4 confession that if he came into contact with  
5 her body, right, when he was inflicting  
6 these wounds with the knife, there would be  
7 a transfer of blood from her back or where  
8 she was bleeding to his body?

9 MR. MITCHELL: I object to the  
10 form. It's been asked and answered.  
11 You can answer again.

12 MR. TIPALDO: Objection to  
13 form.

14 A If Mr. Tankleff ended up with  
15 body contact with her and she was full of  
16 blood, not so much from the cutting but the  
17 fact that she was full of blood, I would  
18 expect blood to transfer back to Mr.  
19 Tankleff.

20 Q And when you say transfer,  
21 you're indicating to his torso and body?

22 A Wherever, right.

23 Q You know -- You're aware that  
24 there were defensive wounds to Arlene  
25 Tankleff, both contusions and cuts on her

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arms?

A Yes.

Q All right. If there was a struggle with defensive wounds where she was being cut, right, and he had a knife in this scenario, there would tend to be castoff or blood spatter on him as the fighting took place, that would be your expectation as a blood spatter expert?

MR. MITCHELL: I object to the form. You can answer.

A I would qualify that to the point with how dead or how near to death she is, how much transfer; in other words, how much blood would be shooting out of her based on those defensive wounds.

Q Well, if there are defensive wounds with cuts, and she's already been bludgeoned about the head, right, if there's cuts that means he has already come back with the knife, correct?

MR. MITCHELL: Objection to form.

A I think you misunderstood what

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I said. In other words, if she is near death, I would expect less bleeding from those wounds. Is that -- Did I make myself clear?

Q So there would be blood spatter but if she's near death it would be less of it?

A I did not say blood spatter, you did. Some type of transfer.

Q Transfer. And you say the closer she would be to death the less transfer you would expect?

A Yes.

Q But if there was a vigorous or lengthy struggle, you would expect more transfer?

MR. MITCHELL: Objection to form. You can answer.

A There again. It depends on how close or near she was to death. If there was a tremendous struggle and she's rolling around with him on the floor, yes, I would expect that there would be a tremendous amount of transfer.

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Q Now, let's move on in the confession.

A Sure.

Q He next says, "I asked him if his father was still in the office. He said, yes, his father was still in the office. He said he was sitting at his desk. He said his father was awake now and asked, "What are you doing?" I asked him if he went in there naked. He said he was still naked. I asked him what he did with the knife and the dumbbell. He said he walked in with the knife on the dumbbell behind his back. I asked him what he did first, cut his throat or hit him, he said he got behind his father and hit him with the barbell first." Okay?

A Yes.

Q Now, going back to the diagram, Exhibit 1.

A Okay, the master bedroom.

Q The master bedroom is all the way -- In what direction is the master bedroom? We're looking at Exhibit 1.

1 C. Kosciuk 195

2 A North is to the top of the  
3 page.

4 Q So this would be to the  
5 northeast, correct?

6 A Correct.

7 Q So the master bedroom is all  
8 the way on the northeast side of the house,  
9 correct?

10 A That's correct.

11 Q And so according to this  
12 confession, Marty Tankleff naked, correct?

13 A Yes, as far as the confession,  
14 yes.

15 Q Right, and your expectation as  
16 a blood spatter expert, he would have --  
17 however this bludgeoning and stabbing  
18 occurred -- would have blood on his person,  
19 correct?

20 MR. MITCHELL: I object to the  
21 form. In the first place, he is not  
22 here as an expert Rule 26 and you're  
23 asking hypotheticals that, I think,  
24 go beyond what he is here for.

25 MR. SCHECK: You made that



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1 objection. So I'm going to direct  
2 him to answer because I think he's a  
3 blood spatter expert and he was  
4 never asked to opine about this so  
5 I'm asking him to opine now.  
6

7 MR. MITCHELL: It's not  
8 relevent what his opinion is.  
9 That's the point. It's something  
10 you're making up scenarios and we  
11 could be here all day where you  
12 could say, if the guy had blood on  
13 his feet and the guy had blood on  
14 his ears.

15 You're just making up facts and  
16 asking him what's his opinion and  
17 it's an improper way of doing it.

18 You know what, I object. You  
19 can answer the question.

20 MR. TIPALDO: I object.

21 Q Now, by the way --

22 MR. MITCHELL: If you want to  
23 just ask him was there any blood  
24 between the bedroom and where he is,  
25 that would make sense instead of the

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2 lead up by reading something that he  
3 has not seen before and then you're  
4 not even formulating a question  
5 from. You read from it and then  
6 say, now, let me ask you something.

7 That's the point of my  
8 objection. The way you're asking  
9 the questions are improper and  
10 basically amount to nothing more  
11 than pure -- and it's not even a  
12 hypothetical expert response. It's  
13 entirely speculative. Go ahead.

14 MR. SCHECK: I don't think it  
15 is.

16 MR. MITCHELL: I know you  
17 disagree with me.

18 Q By the way, when you have  
19 discussions with homicide detectives at  
20 crime scenes and a discussion of blood  
21 spatter and reconstruction, right, when they  
22 talk to you about it, would they ask you a  
23 question if a perpetrator did action A, B  
24 and C, is that consistent with the blood  
25 spatter you see at the scene, right?

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MR. MITCHELL: I object to the  
form. You can answer.

Q They ask you questions like  
that?

A No. They don't.

Q No one ever asked you a  
question like that?

A No. We usually tell them  
what's going on.

Q But sometimes they will propose  
scenarios of what might have happened based  
on other evidence they have, correct?

MR. MITCHELL: Objection to the  
form. You can answer.

A Not to my knowledge. They have  
not asked me.

Q It's never happened?

A No.

Q What about district attorneys,  
have they ever asked you questions like  
that?

MR. MITCHELL: I object to  
form. You can answer.

A Different scenarios, yes, they

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have.

Q And you did that in this case too, right? You gave a whole scenario about how you thought the murder occurred in the office with the knife and the barbell and Seymour Tankleff, right?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: I join.

A I don't think I ever mentioned the barbell in the testimony.

Q Well, a blunt force object and a knife?

A Right. I don't think I mentioned the knife in that testimony.

Q You did not mention the knife?

A Yeah.

Q Well, you opined about instruments that could have been used to cause injuries in the office and castoff and blood spatter patterns on the chair, on the ceiling, all around, correct?

MR. MITCHELL: Objection. Just for clarification, during his trial

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testimony, that's what you're  
talking about?

Q Yes, you did that during the  
trial, right?

MR. MITCHELL: Objection.

Q You did that during the trial?

MR. MITCHELL: Wait. I'm going  
to renew my objection. If you want  
to ask him about trial testimony,  
ask him a question and answer.  
That's the proper format. To simply  
ask a broad, you said this at the  
trial, is improper.

MR. SCHECK: How about this,  
Brian -- I don't think it's  
improper, but Ill try it this way.

MR. MITCHELL: Don't patronize  
me, sir, please.

Q Before you testified at the  
trial, you sat down with the prosecutor;  
didn't you?

A Yes.

Q You went over your trial  
testimony; didn't you?

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A Yes.

Q And in the preparation of your trial testimony didn't he ask you questions about if given the crime scene evidence if Marty Tankleff came from behind and engaged in this action or that action, would that account for castoff for other blood spatter patterns on the chair, on the phone, on the desk, et cetera? You had that kind of discussion with the prosecutor; didn't you?

MR. MITCHELL: I object to the form. You can answer.

A No.

Q You didn't?

A No.

Q You mean what happened was is that you sat down with the prosecutor and you said to him without any interchange of question and answer, here's how it happened?

MR. MITCHELL: I object to the form. You can answer.

A Yes.

Q Now, then humor me, okay --

MR. MITCHELL: I object. Wait.

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I'm just objecting to the phrase  
"humor me."

MR. SCHECK: I will withdraw  
that.

MR. MITCHELL: I know it's  
getting late and all that baloney  
but ask him questions.

MR. SCHECK: I withdraw that.  
I mean you can continue objecting if  
you want, Brian. You have your  
objections that this is an improper  
use of him as an expert and I think  
that I'm allowed to do this.

MR. MITCHELL: Okay.

MR. TIPALDO: In case the  
record does not reflect my joining  
in that same objection for the very  
same reasons, please.

MR. SCHECK: No problem guys.  
Everybody is doing their job.

Q Now, so would it be fair to say  
given what we've reviewed so far about what  
Mr. Tankleff says he did to first bludgeon  
his mother, while was in the bed lying on

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her back and then going to get the watermelon knife from the kitchen, come back and inflict the stab wounds that we found on Mrs. Tankleff, all right, that when he describes walking from the master bedroom in the northeast section of the house all the way to the office which is the northwest --

MR. MITCHELL: That's in reverse.

Q Which is the south?

A Yes, northwest, northeast.

Q Going from the northwest to the northeast?

A Right.

Q That he would have to traverse the whole expanse of the house, correct?

A Yes.

Q And he's carrying a dumbbell that has -- I think you would you agree -- some blood on it and a knife that has some blood on it, and there has been some transfer of blood to his body, correct?

A There could have been some blood transfer to his body if he was close



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2 to her, yes.

3 Q And so but you found no  
4 droplets of blood between the master bedroom  
5 and the office, correct?

6 A That is correct.

7 Q And he then indicates when he  
8 walked into the office and he saw his  
9 father, his father was awake and asked him,  
10 "What are you doing," correct, you see that  
11 in the confession?

12 A Oh, I thought you were asking.

13 Q You see that?

14 A Yes, I see that.

15 Q And he is saying he has the  
16 barbell and knife behind him, correct?

17 A Yes.

18 Q So would it be fair to say that  
19 when Mr. Martin Tankleff is answering this  
20 question, consistent with this confession,  
21 he would have been naked with blood on his  
22 person with the barbell and knife behind him  
23 when his father asked him, "what are you  
24 doing"? That's consistent with this  
25 confession, correct?

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A Yes, it's consistent with the confession.

Q All right. And then, "I asked him what he did first, cut his throat or hit him. He said he got behind his father and hit him with the barbell first. I asked him if his father fought him like his mother did. He said his father asked him why he was doing this. He volunteered that he knocked him silly." Okay, you see that?

A Yes.

Q Now, from the entranceway to the office, okay, which is --

A That one square is the whole office, the white square.

Q How many entrances are there to the office, if you know?

A Well, I do know. There's two large sliding glass doors, a door from the utility area to the house, and then a side door.

Q Where is Mr. Tankleff seated in the office, if you could just draw that on Exhibit 1, which corner?

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A He would be in the northeast corner. The desk, you want me to draw the desk in? Is that what you want?

Q Yeah.

A Somewhere in this area (indicating). And the chair would be somewhere like this (indicating).

Q Now, do you know how far the doorway is from the desk?

A I don't remember those dimensions. We measured that distance, but I don't know the distances offhand.

Q When you entered the crime scene -- So whatever that distance is between the desk and the doorway, right, that would be certainly the distance between Mr. Tankleff, Martin Tankleff, entering, right, with the barbell and the knife behind him naked and his father sitting behind the desk, correct? Is that right?

A It would not be a straight line because there was a lot of furniture in that particular room so he would have to walk around furniture. And then, when he's

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talking to him we don't know where he is.

Q So he would have to walk around furniture?

A A card table was set up here (indicating).

Q He would have to walk around furniture naked with blood on his person with a barbell and a knife behind him, right, and then circle behind the chair where Seymour Tankleff was; is that correct?

A Yes.

Q All the time without his father moving out of the chair or moving the chair back, right, in terms of how you reconstructed this crime scene?

A I'm not following you as far as moving the chair back.

Q Your reconstruction -- And you did do a reconstruction of the crime scene in the office, correct?

A Are you talking about placing the desk and the chair together again in the original position?

Q If I understand, your

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reconstruction of what happened is that you're saying that somebody was behind the chair and inflicted injuries over the top of the chair to the top of Seymour Tankleff's head; is that right?

A Yes.

Q And how many blows? At least four?

A Well, there was bloodstain castoff to the northerly direction, which would be towards the sliding doors, and then there were two castoffs to the easterly direction directly behind the chair, both of them converging approximately over the chair.

Q Now, do you know how much room there was between the chair and the wall?

A Yes.

Q How much?

A I don't know. I would have to refresh my memory. It was measured though.

Q Was it a very large space?

A You want me to guess apparently.

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Q No, to the best of your -- You actually took a measurement of the distance between the chair and the wall --

A Yes.

Q -- is that right?

A Yes.

Q Where would you have that?

A It would have been in my notes.

Q You took notes?

A Well, the notes, the crime scene notes that were turned in for trial.

Q All right. We're going to have a motion to produce those notes because --

MR. MITCHELL: If you did not get them, I'll give them to you.

Q When you say crime scene, to help us lawyers here in the production, can you describe what you mean by crime scene notes?

A In other words, items that were collected, the times they were collected.

Q No, but we're talking about the measurements, the diagram --

A Right.

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Q -- between the chair and the wall and the actual measurements. You did something like that?

A Oh, sure, yes.

Q Where would those have gone after you did it?

A Where would they go?

Q Yes, what happens?

A I assume they are still at the laboratory but the DA's office must have copies because they were in court.

Q Just so I understand, I don't want to put any words in your mouth, but based on your answers earlier today that it was your custom and practice when doing crime scenes is that you would take the measurements, right, you would photograph the various items of evidence and the blood spatter, and then you would orally report any reconstruction or theories you had as to how the crime occurred to the homicide detectives orally, correct?

MR. MITCHELL: He said they may have been present when he said it.

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Q Right, whether it's orally in their presence or sometime therefore, that's how you would communicate, correct?

A Except the order is a little different. First the item would be photographed without being touched. The laboratory tag would be placed and rephotographed, then the item would be measured and documented as to its location in the room, and then collected and placed in a laboratory bag and sealed.

Q But what I'm asking is about the reconstruction itself. That is something that you would do orally, either to the detective at the scene or sometime subsequent, correct?

A Yes.

Q All right. And there was not a custom or practice in the Suffolk County Crime Lab or in your work to actually write a report that described your reconstruction or your theory of how things occurred at a crime scene given the items of evidence and the blood spatter?



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MR. MITCHELL: I object to the  
form. You can answer.

A There was no formal report  
written.

Q It was not your practice to  
write reports?

A No.

MR. MITCHELL: Objection to  
form. You can answer.

Q Are you aware of whether or not  
in the field of blood spatter analysis it  
was a general practice after taking  
measurements, photographing items and  
looking at all the evidence, to write  
reports about the reconstruction that an  
expert might ultimately testify to?

MR. MITCHELL: I object to  
form. You can answer.

MR. TIPALDO: I join.

A No. What year did that come  
into play?

MR. MITCHELL: Just answer his  
question.

Q I'm asking do you know. I'm

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asking about your knowledge.

A No.

Q Now, so you agree that based on the confession, that Martin Tankleff would have to enter the office with a barbell and the knife behind him with some blood on his person, right, engage in this dialogue with his father where his father says, "what are you doing," right?

A Yes.

Q And then he would have to go around some furniture and go behind the chair, right?

A Right.

Q Okay. And then according to this confession, he then hits him on the top of the head with a barbell, correct?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: Objection.

A First, I never said which blows were first, and it could have been on the side of Mr. Tankleff for the first blow and the other two would follow. So he could

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2 have been to the left side first -- I'm  
3 sorry, to the right side first or the north  
4 side of Mr. Tankleff for the first blow --  
5 in other words, the blow came from the  
6 side -- and catch him off guard and then go  
7 by in the chair and hit him twice more.

8 Q Do you recall ever telling  
9 anybody that the first blows could be from  
10 the side?

11 MR. MITCHELL: Objection to  
12 form. You can answer.

13 A I think you just told me that  
14 he is from behind, hit twice --

15 Q I'm asking you about your  
16 reconstruction. In other words, if I  
17 understand your testimony correctly, what  
18 you did is you analyzed the crime scene  
19 evidence, you formulated your  
20 reconstruction, you went and you provided  
21 that orally to homicide detectives, but  
22 you're not sure who, and then when you went  
23 to talk to the prosecutor before the trial  
24 you just presented your reconstruction of  
25 how you thought this happened based on the

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blood spatter evidence without any real interchange with the prosecute or am I misstating anything?

MR. MITCHELL: Objection to form. You can answer.

MR. TIPALDO: I join.

A Yes.

Q Okay. So in your presentation to the homicide detective or the prosecutor before the trial, did you ever tell them that the initial blows could have been inflicted from the side?

MR. MITCHELL: Objection to form. You can answer.

A I can't remember.

Q Okay. But as far as you're concerned right now, based on your recollection and your examination of the evidence, you think that is consistent with your interpretation of it that the initial blows could have been inflicted from the side?

MR. MITCHELL: Objection to form. You can answer.

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A No, I just said I don't know if the blows came from the back or from the side first.

Q Well --

A I don't know the sequence of the blows.

Q If the initial blows to Seymour Tankleff's head came from the side and not the back, would that have significance in terms of the blood spatter evidence that you observed at the scene?

MR. MITCHELL: Objection to form. You can answer.

A Can you repeat that.

Q Yeah. If the initial blows came from the side and not from the back of the chair, right, would that have any significance in terms of the blood spatter evidence that you observed at the scene?

A No.

Q Why not?

A Because there was the evidence that I observed was deposited on the ceiling and that's what I interpreted.

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Q There was also blood spatter on the desk that you interpreted, right?

A Yes. Are you talking about the number of blows and the castoff. I thought that was what we were talking.

Q Not just talking about the castoff. In terms of the entire scene, if there were two initial blows that, as you suggested were possible here, were initially inflicted from the side, would that have any --

A I never said two from the side or one from the side. One from the side, right.

There was bloodstain castoff in the northerly direction. One. From the back, two in two different angles converging over the desk.

Q So you think there was one -- Based on the castoff you're saying that there was one blow from the side?

A Well, that could be argued too because it would take one blow to start the head to bleed before you would get the cast

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off. So there would have to be a strike to the head, allow the victim to bleed, hit him again and now the instrument will become bloody and therefore you would get castoff.

Q Now, as a matter of just common sense, if this confession is true, right, and Seymour Tankleff was in a position to see Martin Tankleff naked with blood on him, right, at the doorway, given the configuration of the room, wouldn't that provide Seymour Tankleff with some time to pull away from the desk and start to get out of the chair?

MR. TIPALDO: Objection.

MR. MITCHELL: I object to form. You can answer.

A Well, do we know the father is really awake?

Q Well, in this confession --

A You're taking that as gospel.

MR. MITCHELL: He's asking you to assume.

Q I'm asking you to assume that the confession in the case is reliable.

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A Give it to me again.

MR. MITCHELL: I object to that.

MR. SCHECK: You're absolutely right, Brian.

Q I'm asking you to assume that the confession as written and as recited is true.

A Go ahead.

MR. TIPALDO: Objection. That's not what you're asking. You're throwing in information that is not contained in that document.

MR. SCHECK: Well, I'm sorry.

MR. TIPALDO: No, I'm sorry. There is nowhere in that document that it indicates that his father sees him in that doorway. Nowhere. We can stipulate to that.

MR. SCHECK: No, not at all. Let's see what the document says and anybody can argue what is --

MR. MITCHELL: I would ask him the question again. The document



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speaks for itself.

MR. SCHECK: We're getting a little -- and I know it was not ill-intentioned on your part, but let me just backtrack a little bit by reciting from what is or is not in the document. Is that okay with you, Joe?

MR. TIPALDO: That's fine.

Q "I asked him if he went in there naked. He said he was still naked." I'm sorry. Let me start at the very beginning of the first full paragraph on Page 12. "I asked him if his father was still in the office. He said yes, his father was still in the office. He said he was sitting at his desk. He said his father was awake now and asked, "What are you doing?" I asked him if he went in there naked. He said he was still naked. I asked him what he did with the knife and the dumbbell. He said he walked in with the knife and the dumbbell behind his back. I asked him what he did first, cut his throat

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or hit him. He said he got behind his father and hit him with the barbell first. I asked him if his father fought like his mother did. He said his father asked him why he was doing this. He volunteered that he "knocked him silly." I asked him how he kept his father from getting out of the chair, he said his father's feet were under the desk so he could not get up." You see that?

A Do I? Yes.

Q Okay. So given that scenario, what this confession is saying is that Martin Tankleff walked through the door with a dumbbell and knife behind him, and you've agreed that given his description and the confession of what happened at the crime scene with his mother he would have blood on him, true?

A Yes.

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: I join.

Q Then, based on what you told us

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about the configuration of the room, the office, Martin Tankleff, consistent with his confession, would have this discussion with his father that he recites and would be able to move around the furniture and get behind him, behind the chair, correct?

MR. TIPALDO: Again, this is not my witness. I can't direct him not to answer but the form of that question is absolutely -- It's inconsistent with what's written on the page. I mean you're adding to the story.

MR. MITCHELL: I'm objecting to the form. I'm not going to direct him not to answer. I'm just objecting to the form.

If you understand the question, answer the question. You know, you can answer the question but I object to the form.

Q Go ahead.

A Okay. First of all, I never said that the first blows were from behind

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the chair. I don't know where the first  
blows were.

MR. MITCHELL: And I don't  
mean -- Maybe this will help. Mr.  
Kosciuk is saying if what's on the  
piece of paper here, if that's what  
happened.

MR. SCHECK: Marty says he is  
behind the chair --

MR. MITCHELL: First of all,  
you can't talk at the same time.  
This lady can't take it.

MR. SCHECK: I'm sorry.

MR. MITCHELL: I think what  
he's saying is if what's on the  
piece of paper, regardless of who  
said it, what he's reading off the  
piece of paper, if that's something  
that occurred, then that would -- I  
don't know if the word infer is  
correct -- that would mean this  
would happen.

MR. SCHECK: Right.

MR. MITCHELL: I think that's

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what he's trying to ask you. When he asks you that, let me object and then you answer that.

MR. SCHECK: You have a standing objection.

MR. MITCHELL: I appreciate that Barry and there is a couple of times where I'm not sure if it applies but I get it.

A Is it my turn to answer?

MR. MITCHELL: It is your turn to answer if you can.

Q Yes, sir.

A You're saying that Marty walks into the room and walks behind the chair?

Q That is what he says here.

A And hits him twice on the back of the head. Hits him from behind.

Q Hits him from behind, that's correct?

A You want me to say if that's possible?

Q No, let's just agree that based on your observations of the crime scene in

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the office that would mean that he would first be walking into the room with the dumbbell and the knife behind him covered with blood, correct?

A Yes.

MR. MITCHELL: Objection to form.

Q With blood on him, correct?

A Yes.

Q Then, following the confession this dialogue would occur where the father says -- father is awake and says, "what are you doing," correct, that's what it says here?

A Yes.

Q And then, Marty would have to go around furniture in front of the desk and move behind the chair in order to hit him from behind the chair and force him from getting out of the chair?

MR. TIPALDO: Objection insofar as the characterization of it following the confession. Over objection.

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Q Let me stop you here. Help you here. In order to get behind the chair, based on your understanding of the office, he would have to walk around furniture, correct?

A The card table intervenes between the doorway and the desk. It was set up with chairs.

Q It says here in the confession that, "I asked him how he kept his father from getting out of the chair. He said his father's feet were under the desk so he could not get up." You see that?

A Yes.

Q Okay. So would you not agree, based on the confession, he's saying he was able to -- that Marty is saying he's able to enter with the dumbbell and the knife behind him with, you would agree, some blood on his person. When his father said, "what are you doing," he would have to go -- if this confession is true -- he would have to go behind, go around the furniture to get to the chair and be able to prevent his father

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from getting out of the chair by keeping him, the father, his legs under the desk having the chair jammed under the desk. That's what this statement is saying, correct?

MR. TIPALDO: I reiterate my same objection.

Q That's your understanding?

A What's the question?

Q My question is, is that your understanding of this statement?

A Yes.

Q All right. Now, it says here, does that raise any doubts in your mind about whether this confession makes common sense?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: I join.

A You're taking the scenario of this thing --

Q I'm only taking what the confession says.

A Confession. You created the



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scenario now you're asking me does it make sense.

Q I'm hardly creating the scenario. I'm asking this confession as recited, these set of events.

A Does this confession make sense?

Q Yes, common sense to you?

MR. MITCHELL: I object again.

You can answer.

A I would say yes, it's possible.

Q All right. You said it's possible. I'm saying, does it make common sense to you?

MR. MITCHELL: I object to the form. You can answer.

A Yes, why not?

Q Is there a difference between something being possible and probable from your point of view as a blood spatter expert?

MR. MITCHELL: I object to the form.

A Blood spatter does not enter

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into this picture here for Marty to get from the doorway to behind the desk.

Q As a forensic scientist when you analyze crime scenes, is there a distinction between something being "possible" and something being likely or probable?

MR. MITCHELL: I object to the form. You can answer.

A Yes, there is a difference. But in this particular case, the scenario you laid out here or the confession, is it possible for him to walk from the doorway around the desk to behind his father if the father has trust in him? Yes, why not?

Q You said his father has trust in him, but the father is asking him, "what are you doing," and you agree that according to the confession he has the dumbbell and the knife behind him. He is naked. It is sometime after 5:35 in the morning and he has blood on his person, right?

MR. MITCHELL: I object to the form. You can answer. Go ahead.

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A How do you know the father sees the blood?

Q All right. So, okay.

MR. MITCHELL: Let me ask --

Q Let me ask you this.

MR. MITCHELL: His response to you, I think, underscores why these types of questions we can go on all day with them.

Q Let's go to something very specific. The next thing in this confession -- and I realize we have two minutes -- the next thing in this confession is that he says, "I asked him what he did next and he said he slashed his father's neck." Do you see that?

A Yes.

Q All right. Now, you gave a statement to the -- You have an Exhibit 7.

MR. SCHECK: Let's stop here.

THE VIDEOGRAPHER: Going off record at 3:51 p.m. This is the end of Tape 4.

(At this time, a brief recess

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was taken.)

MR. SCHECK: Please mark these.

(Whereupon, Plaintiff's Exhibits 10 and 11 were marked for identification.)

THE VIDEOGRAPHER: This is the beginning of Tape 5. We're back on the record at 3:59 p.m. You may proceed.

Q Going back to where we left off, I read you the part of the confession where it says, "I asked him what he did next and he said he slashed his father's neck." You see that?

A Yes.

Q All right. Now, based on this confession, the slashing of the father's neck would have been done by the watermelon knife which Marty had retrieved from the kitchen used to inflict injuries to his mother and now was slashing his father's neck, correct?

MR. TIPALDO: Objection.

A I don't follow you. Is that

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what you're telling me?

Q In reviewing this confession --  
we can go over it again if you want, but I  
think you've been following it pretty  
well -- Marty says in this confession that  
he first bludgeons his mother in the bed  
with the barbell, correct, remember that?

A Yes.

Q That he goes into the kitchen  
to get the watermelon knife, correct?

A And uses that knife on his  
father?

Q Let's just take it a step at a  
time. He uses that watermelon -- He gets  
the watermelon knife from the kitchen, he  
comes back to the bedroom and uses that to  
inflict wounds on his mother, right?

A Yes.

Q That's what the confession  
says. Are you with me?

A Yes, yes.

Q And then he says that he walks  
into the father's office and he has the  
dumbbell and the watermelon knife behind his

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back, that's correct?

A That's correct.

Q That's what the confession  
says, right?

A Yes.

Q And now we're at the point in  
the confession where he says he uses the  
watermelon knife to slash his father's neck,  
correct?

A Correct.

Q Now, you're familiar with that  
watermelon knife, correct?

A Yes, the knife near the  
watermelon, yes.

Q And you were asked to focus on  
that knife when you retrieved it from the  
crime scene, correct?

A Yes.

Q And we have pictures of it here  
that we've reviewed together, correct?

A Yes.

Q And you saw no blood on that  
knife on September 7th, correct, and 8th  
when you recovered it?

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A Not microscopically, just a quick physical exam. It was placed into a container to go back to the laboratory for further examination.

Q And you were aware that the knife was examined, taken apart, and presumptive testing was done, and there was no traces of blood whatsoever found on that knife, correct?

A Yes.

Q Now, I'm directing your attention to your statement which is Exhibit -- Where is the statement to the State Investigation Commission?

A This one?

Q Yes, that's Exhibit 7. And I'm going to call your attention to Page 3. Okay. Why don't you take a look at the third paragraph on the page and I'm going to read this to you. This was a statement you made to the investigators from the State Investigation Commission.

MR. MITCHELL: Before you read Barry, it's not -- It's a

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memorandum. It's not a statement he made. It's not fact. I appreciate it seems to be a memorandum from Anthony Helmer who is a chief investigator that relates his interview with the witness.

MR. SCHECK: That's correct.

MR. MITCHELL: This is a lawyer thing. It's not a statement to the State of New York Commission. That would be entirely different. I just want to make sure it's identified correctly.

MR. SCHECK: Let's be clear. This is a memorandum written by a Kenneth F. Christopherson, special agent, with respect to an interview that he conducted with Mr. Kosciuk on July 17, 2008 at Mr. Kosciuk's home.

Q Do you see that?

A Yes.

Q And you do recall, and I think you mentioned before, that you were so



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interviewed by agents from the State  
Investigation Commission?

A Yes, I was.

Q And you did not remember their  
names but you do remember making statements  
to them, correct?

A Yes.

Q Now, I'm calling your attention  
to this memorandum and I will just read what  
is in that memorandum and ask if this is  
what you said to them. "Kosciuk said he did  
not believe that a knife recovered on the  
kitchen table was used to cause Seymour's  
injuries. He said that Tankleff admitted to  
McCready that he used the knife that was on  
top of the table next to the watermelon. It  
is Kosciuk's "gut feeling" after reviewing  
Seymour's X-rays that a utility-type knife  
was used to cause his wounds. He bases his  
opinion on the type of wounds which were  
long, thin, narrow slashes that he believes  
were likely caused by a razor-like blade.

Additionally, while he was at  
the morgue, Kosciuk observed small marks

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(dots) at the start of Seymour's slash wounds that appeared to him to be indicative of marks that could have been left by the handle of a utility knife. He stated that he may have discussed this matter with medical examiner, Dr. Dawson: Okay, you see that?

A Yes.

Q Did you make that statement to the agent from the State Investigation Commission?

A Not exactly like this, no.

Q Well, tell us what you think is incorrect about how you were quoted in this memorandum?

A I stated to him that I believe that it's a strong possibility that the weapon could be a utility-type knife and that at the start of the wound that I observed it could be the knife, the utility knife, being plunged into the victim and where the knife blade sticks out the encasement of the knife is making a mark above the wound or at the start of the wound

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and that's what I tried to explain to him.

Q Okay.

A Not the handle or any other part of the knife, but part of the blade structure.

Q So you're saying that what he got wrong here is that based on -- Now you actually saw the wounds at the morgue?

A No, I can't remember that at all being even at the morgue. I don't know if it was photographs or being at the morgue that I looked at those wounds. I can't remember.

Q Well, you're quoted as saying "while he was at the morgue."

A Yeah. I don't even remember being at the morgue.

Q But you gave this statement in July of 2008, correct?

A Yes.

Q And your memory of what you did in connection with this investigation was better in July of 2008 than it is today; fair enough?

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A Yes. I would say yes.

Q So is there any reason to doubt that when you said in July of 2008 that you observed you were at the morgue and you observed slash wounds on Seymour Tankleff that you were correct in saying that you were there?

MR. MITCHELL: I object to form. I appreciate you did ask him a little bit, but he has not established that he said this to the investigator.

MR. SCHECK: I asked him what he said.

MR. MITCHELL: And if he said yes that's what I said, I understand your question.

MR. SCHECK: He said yes, that's what he said and he made one small correction about these dots.

MR. MITCHELL: Right, and then as he was further correcting I think he was still --

Q If you're further correcting --

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MR. MITCHELL: Just clarify  
that.

MR. SCHECK: I understand about  
a speaking objections.

Q I'm not trying to trip you up  
on whether or not you were at the morgue or  
not. I'm trying to get your best  
recollection.

Whether you were at the morgue  
or you saw photographs, you saw this slash  
wound, correct?

A I remember discussing this,  
yes.

Q You remember discussing it with  
the medical examiner?

A Yes. Well, I brought it to  
their attention. That was my opinion of  
what type of weapon could have been used.

Q Was there any -- Did you call  
it to the attention of anybody other than  
Dr. Dawson at the medical examiner's office?

A Again, I don't know if anybody  
else was there.

Q Right.

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A But I do remember talking to the medical examiner. I think while he was doing the looking at the wounds.

Q I think as you told us before that there would be occasions when you would attend autopsies in connection with your duties at the crime lab, correct?

A Oh, yes.

Q And so it would be fair to say that, you know, bodies are, in a sense, a form of crime scene evidence themselves, correct?

A Yes.

Q And so as part of your work as a forensic scientist -- You call yourself a forensic scientist?

A Yes.

Q That you would be looking at wounds on the body, comparing them to murder weapons to see whether it was likely or unlikely that a particular knife or other instrument could have been used to inflict certain wounds, correct?

A Actually, that's left up to the

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medical examiner.

Q But you have participated in that kind of discussion and analysis, correct?

A Yes.

Q All right. And now, have you ever discussed whether or not the watermelon knife was, in fact, the knife that was used to cause Seymour's injuries with anyone else from the Suffolk County Laboratory or any other homicide detective?

A I don't know. I can't remember. I don't know.

Q Well, let me see if I can -- What about let's look at Exhibit 10, okay. This is another memorandum that was filled out on July 30, 2008. You guys have a copy.

MR. MITCHELL: I do now.

Thanks.

Q This is another memorandum from the State Investigation Commission from Kenneth Christopherson reflecting an interview on July 30, 2008 with Detective Sergeant Robert Doyle?

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A Oh, okay.

Q You remember Doyle; don't you?

A I remember Doyle. I thought you said it came to my house too.

Q No. I am just going to read you from Page 5.

A Go ahead.

Q "Doyle stated that he felt that some sort of knife and bludgeon were used to inflict the injuries to the victim. Doyle did not believe that a life recovered on the kitchen counter next to a watermelon was used to inflict the injuries and that a smaller knife, possibly a utility knife, might have been used. He based his belief on the compression level of the wounds. He stated that the police were "stuck" with the type of knife described by Tankleff in his confession." You see that?

A Yes, but I don't think I discussed that with Doyle.

Q Would it be fair to say that you agree with Doyle's opinion that the watermelon knife was not the knife that was



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used to inflict the wounds to Seymour Tankleff?

A I can't be a hundred percent sure. I can't eliminate that the watermelon knife, although one of the reasons being that there was substances on the knife next to the watermelon when we examined it, so that kind of -- we were in question of that knife from day one.

Q Right. So when you say day one, would you tell us a little bit more when you say "we," were in question about that knife from day one, what do you mean?

A We looked at the knife --

Q Who is the "we?" You have to tell us we. That would be you?

A If I remember, Sergeant Doyle and Bob Baumann and myself -- I don't know who else -- looked at the knife. Bob Baumann pointed out that there was a substance that would appear to be the watermelon still on the knife.

Q Okay.

A So I can't rule it out as being

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the murder weapon because I'm not sure what

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the murder weapon is.

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Q Well, but you're saying that

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there was a discussion as you were

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processing the crime scene with Doyle and

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Baumann, right, about the watermelon knife

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not being the murder weapon, you're saying,

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because you actually saw what you thought to

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be watermelon on the knife, correct?

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A Yes, a substance we believed to

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be watermelon.

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Q Would it be fair to say by this

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point, however, that Doyle was indicating to

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you that the watermelon knife homicide

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detectives were at least or at least

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Detective McCready believed was used as the

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murder weapon?

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MR. MITCHELL: I object to the

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form.

21

A Repeat that. I lost you.

22

Q Sure. We reviewed before

23

Exhibit 2, which were the memo book entries

24

of Detective Doyle; you recall that?

25

A Yes.

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1  
2 Q And we reviewed together that  
3 at 12:28 there is a notation here that  
4 Martin Tankleff had confessed and that --  
5 I'll read again from Page 2713. "Martin  
6 Tankleff confessed cut his mother's throat,  
7 cut father's throat with a knife that is  
8 near the watermelon in the kitchen." You  
9 see that?

10 A Yeah. I know that.

11 Q You have told us in this  
12 deposition that you do not recall, when you  
13 were processing the crime scene, ever  
14 finding out that Martin Tankleff, the  
15 afternoon that you were processing the crime  
16 scene, as early as 12:28, had confessed to  
17 detectives and said that he used the  
18 watermelon knife to attack both his mother  
19 and his father. You're saying that you  
20 never knew that?

21 A That's correct.

22 Q But you did know, it would be  
23 fair to say, that you were being directed to  
24 look at the watermelon knife as potentially  
25 a murder weapon that was used against Arlene

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Tankleff or Seymour Tankleff?

MR. TIPALDO: Objection to  
form.

A Potentially, used? Yes, it was  
out in the open.

Q Well, you were being  
directed --

A No.

Q Nobody was directing you to  
look at that knife?

A No, I noticed that knife on  
initial walk-through.

Q You're saying that you had a  
discussion with Doyle and Baumann, who is  
the serologist, and yourself, and you looked  
at the knife and the discussion was that you  
had doubts that that knife was used as the  
murder weapon for either of these two  
victims, correct?

A Yes.

Q You just told us that, right?

A Yes.

Q How did you know that anybody  
thought that knife as opposed to any of the

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other knives in the house was the one that might have been used as the murder weapon?

A We didn't.

MR. MITCHELL: I object to the form. You can answer.

A We didn't.

Q You're telling us that Doyle never indicated to you that they had a confession that Marty Tankleff had said he used that knife to attack both his mother and father?

MR. MITCHELL: Objection to form.

MR. TIPALDO: Asked and answered.

Q You did not know that that day?

A No, I didn't say that neither. I told you that evening we found out certain things that had to be collected.

Q So that evening you learned that Martin Tankleff had made a confession and that as part of that confession the watermelon knife was supposed to be the weapon that he used to both attack his

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mother and his father?

MR. TIPALDO: Objection to  
form.

A Yes.

Q And that evening there was a  
discussion then with Detective Doyle and Mr.  
Baumann as to your doubts that that knife  
could have been used as the murder weapon,  
correct?

MR. MITCHELL: I object to  
form. You can answer.

A No, we had initial doubts when  
we first observed the knife. There was a  
substance on it without any blood.

Without being examined, you  
cannot rule it out. It was right in the  
open. It was right on the chopping block.

MR. MITCHELL: Just to clarify,  
what time are you referring to in  
what you just described?

THE WITNESS: The walk-through  
was early in the morning about -- It  
was about, yeah, 9:30. I would say  
about 10 o'clock, somewhere in

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there. Well, between 9:30 and  
10 o'clock when we did the initial  
walk-through.

Q That's when this conversation  
happened?

A What conversation?

Q The conversation --

A When I noticed the knife on the  
end of the block, I observed that knife and  
I knew right away we were going to take that  
knife. Does that answer your question?

Q Right.

A Right away. It was out in the  
open.

Q Right, but you have told us  
about a conversation that you had with Doyle  
and Baumann where you expressed, and I take  
it they also agreed, that it was unlikely  
that the watermelon knife was the murder  
weapon. You just told us there was such a  
conversation.

A Wait a second. Only because  
there was a substance on the knife so  
therefore we said, okay, we're taking it.

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Q I have to stop you for a second because we have to be clear.

When did that conversation -- There was a conversation between you, Doyle and Baumann about the watermelon knife not being the knife that was used to inflict injuries to Arlene and Seymour Tankleff, correct?

MR. MITCHELL: I object to the form. You can answer.

Q There was such a conversation?

A No, wait a minute. I don't know if Doyle was involved. I know Baumann and myself discussed it. Was Doyle present? I can't answer that.

Q I thought you told us just a few minutes ago -- the record will reflect -- that Doyle was present at that conversation?

A He was the sergeant at the scene. He could have been present, yes.

Q Let's just take it step-by-step. You're sure that you and Baumann had a discussion?



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A Yes.

Q And that discussion, would it be fair to say, took place that evening?

A You know, I can't answer that. I don't know exactly when we discussed that knife in the kitchen.

Q Okay. And I just want to get your best recollection. You can't recall whether Doyle was present or not when you and Baumann had the discussion that you did not think the watermelon knife could have been the murder weapon; however, at some point either that night or the next day is it fair to say that that was communicated to Doyle that that was your view?

A Oh, did I tell him that?

Q Or did either you or Baumann?

A He might have observed that on his own. At the time we went through the house there were many people in the house. There was three --

MR. MITCHELL: Chuck, he is asking you, did either you or Baumann ever tell that to Doyle.

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A No.

Q Are you sure?

A No. If he heard me say it, but I did not directly say it to him, no.

Q So, in other words, he might have been present when you and Baumann discussed it, but you do not have a specific recollection of telling him?

A That's right.

Q Now, just to go back, was there any discussion on September 7th or 8th or thereafter among people at the crime lab about whether this watermelon knife was, in fact, the murder weapon?

A Other than what I suggested at the morgue that time with the utility knife, there was no other discussions.

Q Who else besides Dr. Dawson did you share your view that you did not believe that the watermelon knife, just based on your observations of Seymour Tankleff's wounds and his X-rays, could have been the murder weapon?

A I did not base it on the wounds

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the initial day because I didn't see the  
wounds. I based it on the fact that it's  
out in the open. It was adjacent to the  
watermelon. There was watermelon it and I  
didn't see any blood. I said, we're going  
to take to the knife because it's out in the  
open, but it does not feel to me like it's  
the murder weapon.

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Q Right. And then sometime  
subsequent to that you went to the morgue,  
correct?

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A When Mr. Tankleff passed away,  
I guess, yeah.

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Q And he did not die for, I  
think, 10 days, as many as 30 days?

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A I guess.

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MR. MITCHELL: Don't guess. If  
you know, you know.

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A Well, they're saying 30.

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Q Let's not guess on the number  
of days. It was some number of days past  
between the time you processed the crime  
scene and the time that you went to the  
morgue and examined the wounds and expressed

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a view to Dr. Dawson that you did not think the watermelon knife was the knife?

A I never asked the wound, first of all. I was a bystander.

Q When you observed the wounds?

A Can I have the question.

Q When you observed the wounds. You were at the morgue, you observed the wounds?

A Go ahead.

Q And you expressed the opinion to Dr. Dawson that you did not believe this watermelon knife was the murder weapon, instead you thought it was some kind of utility knife?

A Okay, yeah.

Q You did say that?

A Yes, yes.

Q That was in addition to your doubts that you had the date that you first observed the watermelon knife because you thought you saw a particulate of watermelon on it, correct?

A Yes.

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1  
2 Q Now, by the time you were at  
3 the morgue, had you learned that at least  
4 some homicide detectives believed that the  
5 watermelon knife was the murder weapon?

6 MR. MITCHELL: I object to the  
7 form. You can answer.

8 A I have no idea.

9 Q Well you knew that was an  
10 issue; didn't you?

11 A No.

12 Q You didn't think that anybody  
13 believed that the watermelon knife might  
14 have been the murder weapon?

15 MR. MITCHELL: Objection.

16 A We took it as the murder  
17 weapon. We documented that number. I  
18 forgot what number it was now, and we  
19 collected it, but we collected all the  
20 knives in the house.

21 Q But when you're at the morgue  
22 and you're looking at that knife and you're  
23 expressing to Dr. Dawson the view that the  
24 watermelon knife is not the murder weapon --

25 A I never said that neither. I

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said that it looks more like a utility knife  
Based on that little dot before the cuts and  
the depth of the cut.

Q Well --

A That was my opinion anyway.

Q I understand but you expressed  
the view that the watermelon knife was not  
the murder weapon to Dawson at the morgue,  
right? You just told us you said that.

A No. I didn't. I said it's  
more consistent with a utility knife cut  
than that particular watermelon knife or the  
knife next to the watermelon.

Q In the days after you processed  
the crime scene, didn't you become aware  
that some homicide detectives believed that  
the watermelon knife was, in fact, the  
murder weapon?

MR. MITCHELL: I object to the  
form. You can answer.

A No, I have no idea.

Q You had no idea?

A No.

Q Nobody ever told you?

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A No.

Q So as we sit here today going through the confession of Mr. Tankleff that was given on September 7, 1988, you're telling us this is the first time you ever heard that it was the theory of the homicide detectives and it was stated in Martin Tankleff's confession that the watermelon knife was the murder weapon?

MR. TIPALDO: Objection to form.

MR. MITCHELL: Objection. You can answer.

A You changed it around. You told me some of the detectives believed it is.

Q Did you ever hear from anyone in law enforcement who was investigating this state immediately subsequent to processing the crime scene that they believed that the watermelon knife was the murder weapon?

MR. MITCHELL: I object to the form. You can answer.

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A They believe it? Yeah, that night they believed it. The night we were there they believed that Marty confessed to the watermelon knife being the knife so we took it. I don't understand your question.

Q I'm asking did you know that was the reason that you took the knife was that the homicide detectives believed the watermelon knife was the murder weapon?

A Yes, he confessed to it that night. Sure, we'll take.

Q You knew that?

A I told you that there were certain things that night that they directed us towards.

Q When they directed you to take the watermelon knife, you knew they were directing you to take it because they thought it was the murder weapon?

MR. MITCHELL: Objection to form.

MR. TIPALDO: Join.

Q Are you telling us now that you knew that they directed you take the



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2 watermelon knife, at least certainly by the  
3 second day, because Martin Tankleff had  
4 confessed that he used the watermelon knife  
5 as the murder weapon?

6 MR. MITCHELL: I object to the  
7 form. You can answer.

8 A Yes.

9 Q And you felt from the  
10 beginning, just to be clear about this, you  
11 expressed the view to Baumann that may have  
12 been overheard by Doyle that you did not  
13 believe the watermelon knife was the murder  
14 weapon just at the beginning because you saw  
15 some particulate something on it, correct?

16 MR. TIPALDO: Objection. Asked  
17 and answered.

18 A Yes.

19 Q And the reason that led you to  
20 believe it was not the murder weapon is that  
21 because if it had, in fact, been used to  
22 attack Arlene Tankleff or Seymour Tankleff  
23 the watermelon would have come off, the  
24 watermelon particulate would have come off  
25 somewhere in the attack?

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MR. TIPALDO: Objection to  
form.

A Yes.

Q And then, subsequently when you  
went to the morgue, you told Dr. Dawson the  
medical examiner, that you did not think the  
watermelon knife was the murder weapon, you  
thought it was a utility knife?

A After looking at the wounds,  
that's correct.

Q And you also made a statement  
here that there were X-rays, right?

A I don't know about the X-rays.  
I don't remember that part at all.

Q How would X-rays be relevant?

A I don't know. I don't  
understand.

Q And let's continue going  
through the confession here.

A Sure.

Q So in your opinion, this  
confession is not consistent with the  
objective forensic evidence, at least in  
your judgement, insofar as the confession

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says that the watermelon knife was used to attack both Arlene and Seymour Tankleff, and you believe that the objective crime scene evidence is inconsistent with that version of events?

MR. TIPALDO: Objection.

MR. MITCHELL: Objection to the form. You can answer.

A No, I don't. I never said that.

Q You didn't just say that to us?

A No, because I think that the utility knife -- a utility knife might be the weapon? I just told you before that the watermelon knife, I can't rule out the watermelon knife as not being the weapon. I have no reason to rule it out.

Q Okay. Well, I think you did give us some reason why you thought it was reasons to rule out the watermelon. One, is that you saw a particulate on it at the time you processed the crime scene, right?

A Yeah, but we don't know what happened to that knife between the time of

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the murders and when it was placed on that block.

Q That would be one reason to rule it out that there was a particulate on it, yes?

A Yes.

Q And you expressed that to Mr. Baumann, correct?

A Yes.

Q And another reason to rule it out if there was no blood on that knife with subsequent serological testing that would be a reason to rule it out, correct?

A You're using the term "rule it out."

Q You used the term rule it out.

A No, I would never use the term rule it out. It's still the murder weapon as far as we're concerned. We can't prove it's the murder weapon.

Q As part of doing crime scene reconstruction you examine evidence at a crime scene, which includes blood spatter and blood on weapons, and impressions that

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weapons make, correct?

A Yes.

Q That's part of your job?

MR. MITCHELL: Right?

A Yes.

Q And as part of doing reconstruction you try to test a hypothesis as to whether a particular instrument was used to commit a homicide? That's part of your blood spatter and crime scene reconstruction expertise, correct?

A Yes.

Q And would you not agree with me that when you first arrived at the crime scene you took a look at the watermelon knife, you found it to be unlikely that that was used as the murder weapon because you saw watermelon particulates on it, correct?

MR. MITCHELL: I object to the form. You can answer.

A It brought a question to mind that it possibly wasn't the murder weapon.

Q And one of the reasons you thought it wasn't the murder weapon is that

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2 if it had been used to attack Arlene and  
3 Seymour Tankleff it would have to be washed  
4 off and then somebody would have to cut the  
5 watermelon and put the particulates on it,  
6 clean off the knife, and put it in the  
7 position that you found it in the crime  
8 scene, correct?

9 MR. MITCHELL: Objection to  
10 form. You can answer.

11 A Well, you can wash it and just  
12 cut a piece of watermelon, take the water  
13 and leave the knife.

14 Q But that would be the chain of  
15 events that would have to occur for that to  
16 be the murder weapon, correct?

17 MR. MITCHELL: I object to the  
18 form. You can answer.

19 A I will say yes to that.

20 Q That was the concern you had at  
21 the time, correct?

22 A Yes.

23 Q And that was the concern you  
24 expressed to Baumann, correct?

25 A Yes.

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Q And then subsequently you learned that this watermelon knife, when it was tested for the presence of blood, there wasn't any on it, correct?

A That's correct. No blood.

Q And that, wouldn't it be fair to say that that increased your doubts as to whether or not the watermelon knife could be the murder weapon when you discovered there was no blood on it when it was disassembled and tested?

MR. MITCHELL: Objection to form. You can answer.

A As far as it being the murder weapon, I leave that up to the medical examiner and I don't think that --

Q I asked you a different question. Just answer my question. My question is that when you found out there was no -- the serological testing, the presumptive testing had discovered no blood on the watermelon knife, did that increase your doubts that the watermelon could have been the murder weapon?

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A Yes.

Q And then, when you went to the morgue and you saw the wounds on Seymour Tankleff, you then expressed to the medical examiner another reason that you thought the watermelon knife could not have been the murder weapon; that is, that you thought that the kinds of wounds that Seymour Tankleff suffered, long, thin, narrow slashes, were likely to be caused by a razor-like blade, not a knife like the watermelon knife?

A That was my opinion, yes.

Q So that's at least three factors now which, based on the crime scene evidence, led you to have doubts, at least by the time of the autopsy, that the watermelon knife wasn't the murder weapon, right?

MR. MITCHELL: I object to the form. You can answer.

Q Yes?

A I doubted that, I told you, the first day but we took it because it was in



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the confession.

Q I understand, but I'm now pointing out that there were at least three factors now that, in your mind, based on forensic evidence, made it unlikely that the watermelon knife was the murder weapon, correct?

MR. MITCHELL: I object to the form. You can answer.

MR. TIPALDO: I join.

A What's the forensic evidence again? The fact that there was no blood on it?

Q Yes, the fact that you saw a particulate --

A It could still remain as the murder weapon. If the weapon was washed, it could remain the murder weapon. If after that he took a piece of the watermelon late, it's still a murder weapon. And what's the third thing? The cuts, that knife is capable of making deep cuts into a human being. So as far as I'm concerned, yes, it still could have been the murder weapon.

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Q But you expressed the view --

A What I was saying at the morgue was when I looked at the wound on one of the cuts on Mr. Tankleff there was a dot before the cut. In other words, it looked like a jab and it looked more consistent with a utility knife jabbing in.

And, you know how a utility knife the blade extends and there's a shielding around the knife. Well, it looked like the tip of the shielding touched and then the knife was drawn. That's totally my opinion and I expressed it at the morgue.

Q But that was in addition to the watermelon being on the knife at the crime scene; meaning that it would have to be washed and then used to caught the watermelon again, yes?

A Or wiped or whatever, yes.

Q That there was no blood recovered on the knife, correct?

A Yes.

Q And that you thought the wounds were more consistent with a utility knife

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2 than a watermelon knife when you saw it at  
3 the morgue, correct?

4 A More consistent with a utility  
5 knife? I said it's a possibility that a  
6 utility knife could have been used.

7 Q Those are three factors,  
8 correct?

9 A Yes.

10 Q Based on objective evidence,  
11 correct?

12 A Yes.

13 Q And you did tell the State  
14 Investigation Commission in July of 2008  
15 that, "Kosciuk said he did not believe that  
16 the knife recovered on the kitchen table was  
17 used to cause Seymour's injuries."

18 A That's right. Kosciuk said.  
19 That's me. That's my opinion.

20 Q I'm only asking about your  
21 opinion. And in your opinion what you can  
22 rule in and rule out, okay? Are you with  
23 me?

24 A Yes.

25 Q And I'm only asking about what

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you think is probable or improbable, okay?

Are you with me, yes?

A Yes, go ahead.

Q I think we talked about before that that's part of your job to decide what is probably and likely or not likely given the crime scene evidence?

A Yes.

Q Now, let's go back to the confession. And just to be clear, I don't want to be unfair with you.

It makes you uncomfortable to even say aloud that you don't believe that the murder weapon is the murder weapon, right?

MR. MITCHELL: I object to the form. I'm going to direct him not to answer that question.

MR. SCHECK: Why?

MR. TIPALDO: I join.

MR. MITCHELL: Whether it makes --

MR. SCHECK: I can ask him --  
Let me ask him this way, Brian, see

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if you have a problem with it.

MR. MITCHELL: I don't have a problem with anything. We disagree. In fact, I withdraw my instruction for him not to answer the question. I renew my objection. You can answer.

Q Does it make you uncomfortable to state out loud in this deposition that in your opinion you do not believe the watermelon knife was the murder weapon?

MR. MITCHELL: Objection to form.

MR. TIPALDO: Objection.

A I don't have an opinion. I said to you that the watermelon knife can very well be the murder weapon. I never said it wasn't the murder weapon.

I said when I looked at the wound in the morgue it looked, based on what I saw, it looked like it could be a utility knife. Period.

Q Now, let's go on in this confession. We're in the second paragraph.

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"I asked him if he knew how many times he hit or cut his father. He said he did not know how many times he hit or cut him. Again, he volunteered he couldn't believe all the blood. I asked him what he did with the knife and the barbell. He said he washed off the knife and barbell in the shower. I asked him what he did with the barbell and the knife after he washed them off. He said he put the barbell back in the bedroom and he put the knife on the counter by the watermelon." Do you see that?

A Yes.

Q Okay. Now, based on this confession, would you not agree, just looking at the confession, that Mr. Tankleff says that he got up based on his alarm at 5:35 in the morning; you remember that?

A Mr. Tankleff.

Q Marty Tankleff. You remember that, yes?

A Yes.

Q And we reviewed that he used the barbell in his room to attack his

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1  
2 mother, correct?

3 A Yes.

4 Q Then he went into the kitchen,  
5 got the watermelon knife from the counter,  
6 went back to the bedroom, slashed his mother  
7 on the back and on the neck, correct; is  
8 that right?

9 A Right.

10 Q Then he took the barbell and  
11 the knife -- and he's doing all this naked,  
12 correct?

13 A Yes.

14 Q And he put them behind his back  
15 and he went to his father's office, correct?

16 A That's according to his  
17 confession, yes.

18 Q And we agreed that assuming  
19 that what he said in the confession is true,  
20 based on your expertise as a blood spatter  
21 expert, right, there would be some blood on  
22 him when he entered his father's office,  
23 correct?

24 A Yes.

25 Q And that he went around the

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card table and some furniture, and the confession says he then struck his father in the head with the barbell, correct?

A Correct.

Q And then he slashed his father's throat with the watermelon knife, correct?

A Right.

Q And then he went into the shower and washed off the watermelon knife and the barbell, correct?

A Right.

Q That's what the confession says, yes?

A Yes.

Q And that he then took the watermelon knife and placed it back on the table in exactly the position that you saw it when you came back -- when you processed the crime scene; is that correct?

A Yes.

Q And he returned the barbell to his bedroom in the position that you photographed it as depicted in Exhibit 8,



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correct?

A Yes.

Q And if the 911 call-- Let's look back at the confession here. He says, "He put the barbell back in his bedroom. He put the knife on the counter by the watermelon. I then asked him what he did next. He said he went and laid down in his bed. He thought about what to do next and he got up at 6:10:00 a.m. I asked him what happened when he got up. He said he went back to the office, saw his father was still alive. He went to his mother's room to see if she was dead. He said he called 911 from his mother's room." You see that?

A Yes.

Q Now, we know that the 911 call was recorded at 6:11, correct?

A Yes.

MR. MITCHELL: We've stipulated to that. Does he know?

MR. SCHECK. Yes.

Q I'm telling him that the 911 call was at 6:11.

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A All right.

Q Assuming his confession to be true that between 5:35 a.m. and 6:11 he would have to have had to engage in all these activities including washing off the watermelon knife and the barbell and returning them to the place where you saw them when you processed the crime scene, correct?

A Correct.

Q And I think your added detail to this is that in terms of the watermelon knife itself, he would have to, in addition, do a little cutting of the watermelon so that there could be a little particulate of watermelon on the knife, correct?

A Yes.

Q Now, when cleaning off the knife, the watermelon knife, assuming that it was the knife that was used to inflict the injuries on Arlene Tankleff and Seymour Tankleff, and it was being washed in the shower, wouldn't you agree, based on your knowledge of knives and even looking at this

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particular knife, that in order to get all the blood off the knife one would have to be very careful to wash the crevices of the knife?

A What crevices?

Q In other words, take a look at the knife.

A The handle? First of all, blood is highly soluble in water and there would be no problem with hot water -- Fresh blood? There would hardly be any traces on it.

Q So you're saying that you believe that hot water in the shower would --

A Just water alone.

Q -- would eliminate any trace of blood?

A Yes.

Q Even within the handle of the knife?

A How do you know there is blood in the handle?

Q Well, let me ask you. If one

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1  
2 were to inflict the kind of deep wounds that  
3 you saw on Arlene Tankleff's neck and back  
4 and the wounds that you saw on Seymour  
5 Tankleff, are you, based on your knowledge  
6 of blood spatter and crime scenes, do you  
7 not think that there is a likelihood that  
8 blood would get within the crevice of the  
9 handle of the knife?

10 MR. MITCHELL: I object to  
11 form. You can answer.

12 A Can I see the length of the  
13 knife?

14 Q Let's take a look at it.

15 A Did you ever see a butcher cut  
16 a big chunk of meat?

17 MR. MITCHELL: Detective, he  
18 has not asked a question.

19 MR. SCHECK: I did ask him a  
20 question.

21 A You can make those wounds  
22 without getting blood on the handle, yes.

23 Q So you believe that in the  
24 course of committing the homicides, as  
25 described in this confession, that it is

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1 unlikely that blood would, in any small  
2 amounts, would be lodged in any of the  
3 crevices of this knife?  
4

5 MR. TIPALDO: Objection. Asked  
6 and answered.

7 MR. MITCHELL: Objection.

8 A Yes.

9 Q Would it be fair to say that in  
10 order to be sure, these tests for blood, the  
11 presence of blood, I think we agreed before  
12 are very sensitive; are they not?

13 A Yes, they were.

14 Q So the smallest amount of blood  
15 lodged in the crevice of the knife when a  
16 presumptive test was done would detect its  
17 presence, correct?

18 MR. MITCHELL: Objection to the  
19 form. You can answer.

20 MR. TIPALDO: Objection.

21 A Depending on the test used,  
22 yes, it should detect blood.

23 Q In order to be certain that no  
24 blood would be detected on this knife, one  
25 would have to disassemble the knife and

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clean the handle area separately and then  
put it back together.

MR. TIPALDO: Objection.

MR. MITCHELL: Objection to the  
form. You can answer.

A No.

Q Have you ever examined knives  
of this nature that were used in the course  
of stabbings to detect the presence of blood  
in the crevices?

MR. MITCHELL: I object to the  
form. You can answer.

A No, I'm not a serologist.

Q But you recover the knives and  
then you submit them to the serology section  
for analysis, correct?

A Yes.

Q And in the course of that work  
over the years, with some frequency,  
wouldn't it be fair to say that the  
serologists are able to disassemble knives  
and in the crevices perform presumptive  
tests and discover blood?

MR. MITCHELL: Objection to

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form.

Q Isn't that true?

MR. TIPALDO: I object.

MR. MITCHELL: I object to the  
form. You can answer.

A It depends on how well  
constructed the knife is. This particular  
knife is a well-constructed knife.

Q In your experience in crime  
scenes, you have had occasion where knives  
are used in the course of stabbings, you  
recover the knife, there's no apparent blood  
on the knife, you send it to serology, they  
disassemble the knife and they detect using  
presumptive tests blood in the crevices of  
the knife?

A Yes.

Q In your experience that  
happens?

A Yes.

Q It happens with some frequency,  
correct?

A Yes.

MR. MITCHELL: Objection.

1

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2

A Frequency I can't testify to.

3

Q It happens often in the crime

4

scene?

5

A I can't testify to that.

6

Q How many times do you think

7

that's happened?

8

A I don't know what happens at

9

the crime scene and what the report is in

10

the lab. We don't follow that through.

11

Q So the reason you can't testify

12

with any frequency is that you don't always

13

know what serology finds; is that right?

14

A Correct.

15

Q But based on some cases, to

16

your knowledge, you collect the knives, it's

17

sent to serology, they disassemble them and

18

they perform presumptive tests on the knife

19

and they detect the presence of blood, even

20

if you're looking at the knife you don't see

21

it, right?

22

MR. MITCHELL: Objection to

23

form.

24

A Yes.

25

Q By the way, just take a look



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at --

MR. SCHECK: I guess we'll mark this.

(Whereupon, Plaintiff's Exhibit 12 was marked for identification.)

Q Plaintiff's Exhibit 12 is a supplemental report and there's a highlighted version and you can take a look at it, and it indicates that Mr. Baumann did not arrive at the crime scene until what?

MR. MITCHELL: Wait a second. I thought you were just describing what the report was.

MR. SCHECK: I'll show it to you.

A I did not finish reading that either.

MR. MITCHELL: Wait. Wait.

Q These kinds of supplemental reports are made out contemporaneously in order to determine when people log into the crime scene; fair enough?

A Okay, right.

Q Take a look at that and verify

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that for yourself.

MR. MITCHELL: You're asking  
what the supplemental report says.

Q I'm asking what it is  
generally, what's its function, and taking a  
look at that would you not agree that at  
least according to this report it gives a  
time for when Baumann arrived at the crime  
scene?

A I can't read the first numbers.

Q I know, but take a look at the  
numbers above and below.

A I'm looking at them too. Can  
anybody read them?

Q Well, we believe that says --  
When you look, there's a cutoff here but we  
believe it says 11:31. Just in fairness to  
you I just want to call your attention to  
that.

A But that would be all right.

Q I just wanted you to know that  
that's when Baumann got there.

MR. MITCHELL: I'm going to  
object to the form of the question.

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This is a document that I think speaks for itself, that says, although mine is cut off, Barry, I think you said 11:31 --

MR. SCHECK: Yeah.

MR. MITCHELL: -- that Robert Baumann, crime lab 1036, which I'm not going to testify, but are you aware that 1036 means when he arrives at the scene? That's police codes for when he arrives.

I don't object to you saying that this document indicates that, but the way you said it is that means he was there. We all can understand that that could be an error. I'm not saying it is an error, it's just the form of your question says that this establishes that he was there.

MR. SCHECK: I thought my question was -- In fairness, I was showing him that to see if it refreshes his recollection.

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MR. MITCHELL: Ask him that question. You know what time Baumann got there? Does this refresh your recollection?

Q Does this refresh your recollection of when Baumann got there and you had a conversation with him about the watermelon knife, in your judgement, not being the murder weapon?

A But that's way before we go into the scene. We don't go into the scene until 2 o'clock.

MR. MITCHELL: Just listen to his question and answer his question.

Q So the answer to the question is no, it does not refresh your recollection.

Looking again at Plaintiff's Exhibit 10 which is the investigation report of Doyle that I called your attention to, okay, you see that he says that he does not -- I'll read it again just so we're clear. "Doyle stated that he felt some sort

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of knife and bludgeon were used to inflict the injuries to the victims. Doyle did not believe that a knife recovered on the kitchen counter next to the watermelon was used to inflict the injuries and that a smaller knife, possibly a utility knife, might have been used. He based his belief on the compression level of the wounds. He stated that the police were "stuck" with the type of knife described by Tankleff in his confession." You see that?

A Yes.

Q I take it that you would agree with what Doyle is quoted as saying here about the type of knife that was used to inflict the wounds at least to Seymour Tankleff, correct?

MR. MITCHELL: I object to the form. It's asked and answered. Barry, I think you asked that exact question about half hour ago.

MR. TIPALDO: I join.

MR. MITCHELL: You asked this entire series of questions already.

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I'm going to object. I'm not going to tell him not to answer. You already asked this entire series of questions.

MR. SCHECK: I'm backtracking just for a second because I'm trying to get in a different point.

MR. MITCHELL: Okay, I appreciate that.

A I don't know who he is talking about? Which victim? I don't know which victim he's talking about.

Q Just to refresh -- Just to look at it again, "Doyle stated that he felt some sort of knife and bludgeon were used to inflict the injuries to the victims. He did not believe that a knife recovered on the kitchen counter next to the watermelon was used to inflict the injuries and that a smaller knife, possibly a utility knife, might have been used. He based his belief on the compression level of the wounds. He stated that the police were "stuck" with the type of knife described by Tankleff in his

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confession."

You see that.

A Give me the date and time he says this.

Q He says this on July 30, 2008 to the State Investigation Commission.

A Okay. That's possible, sure.

Q Okay. Now, but what I'm really probing here is discussions between you and other police officers and other members of the crime lab about your opinions with respect to the watermelon knife, okay?

A Yes.

Q Now, you've told us that you had one conversation with Baumann where Doyle might have been present, correct?

A In relation to the watermelon knife?

Q Yes, at the crime scene.

A Yes.

Q Where you expressed doubts that that could be the murder weapon, correct?

A Yes.

Q And you admitted, finally, I

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1 think, that you knew at the crime scene that  
2 you were collecting the watermelon knife  
3 because Tankleff had confessed that that was  
4 the murder weapon. You told us that?  
5

6 A Friday evening, correct.

7 MR. MITCHELL: Let him finish.

8 I object to the form. You can  
9 answer.

10 A Yes.

11 Q He said Friday evening. Okay.

12 And then now, do you recall  
13 between the time that you collected the  
14 knife and expressed these views on Friday  
15 evening, all right, to Baumann, probably the  
16 presence of Doyle, expressing that view to  
17 anyone else?

18 A Wait. Friday evening?

19 Q When, to the best of your  
20 recollection, did you have this conversation  
21 with Baumann potentially in the presence of  
22 Doyle as to your viewing that the watermelon  
23 knife, which you knew had been identified by  
24 Marty Tankleff in his confession as the  
25 murder weapon, that you had doubts that it



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was the murder weapon?

MR. MITCHELL: When did that happen? When did you have that conversation?

I object to the form of your question, but just answer his question if you can timewise. I think we've done this already.

When did you have the conversation about the knife with Baumann and Doyle might have been there or not? When did that happen?

THE WITNESS: Sometime on Wednesday, the day of the homicide.

MR. SCHECK: Off the record.

THE VIDEOGRAPHER: The time is 4:59 p.m. This is the end of Tape 5.

(Whereupon, a recess was taken.)

THE VIDEOGRAPHER: This the beginning of Tape 6. We're back on the record at 5:02 p.m. You may proceed.

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MR. SCHECK: I believe that we have about two hours and 10 minutes left in permissible time to depose the witness and we're going to find a mutually convenient date with counsel.

And there was one item having to do with notes from the crime scene which Mr. Mitchell says he's seen and for some reason we don't think we've seen it, but we're going to work that out and try to make that production by the time we get back the next time.

Have I got it all right, Counsel?

MR. MITCHELL: That's correct. And we'll try and come up with a date convenient for all.

MR. TIPALDO: I appreciate the copies of the exhibits although I don't have all of them but I understand why. I'm new to the table and I understand sometimes you

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may not remember that there is  
another party here.

In the event that we conduct a  
further deposition of this witness  
before we get the transcript with  
exhibits attached to the back, I  
would appreciate it if you furnish  
me with an extra copy.

(Continued on next page to  
include jurat.)

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MR. MITCHELL: Not a problem.

MR. TIPALDO: Thank you.

THE VIDEOGRAPHER: This is the  
end of Tape 6. We're off record at  
5:03 p.m. with a videotaped  
deposition of Detective Charles  
Kosciuk. We're off record at 5:03.

(Time noted: 5:03 p.m.)

-----  
CHARLES KOSCIUK

Subscribed and sworn to before me  
this \_\_\_ day of \_\_\_\_\_, 2013.

-----  
NOTARY PUBLIC

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ERRATA SHEET FOR THE TRANSCRIPT OF:

Case Name: Martin Tankleff vs The County of  
Suffolk, K. James McCready, Et Al  
Deposition Date: October 2, 2013  
Witness: Charles Kosciuk

CORRECTIONS

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\_\_\_\_\_  
Signature

Subscribed and sworn to before me  
this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
(NOTARY PUBLIC)

CERTIFICATION

I, DOLLY FEVOLA, a Notary Public in  
and for the State of New York, do hereby certify:

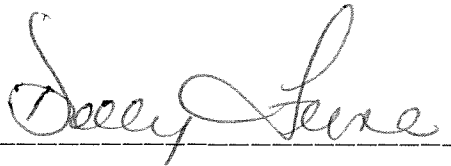
THAT the witness whose testimony is herein  
before set forth, was duly sworn by me; and

THAT the within transcript is a true record  
of the testimony given by said witness.

I further certify that I am not related,  
either by blood or marriage, to any of the parties  
to this action; and

THAT I am in no way interested in  
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto  
set my hand this 26th day of October, 2013.

A handwritten signature in cursive script, appearing to read "Dolly Fevola", is written over a horizontal line.

DOLLY FEVOLA

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